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96TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. No. 96-1387, VOL. 1

IN THE MATTER OF REPRESENTATIVE MICHAEL J. MYERS

COMPLETED

REPORT OF COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

[To accompany H. Res. 794]

ORIGINAL

Together with Desenting Views.

SEPTEMBER 24, 1980.—Referred to the House Calendar and ordered to be printed

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96TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 96-
1387, VOL. I

IN THE MATTER OF REPRESENTATIVE MICHAEL J. MYERS

SEPTEMBER 24, 1980.—Referred to the House Calendar and ordered to be printed

Mr. BENNETT, from the Committee on Standards of Official Conduct, submitted the following

REPORT

[To accompany H. Res. 794]

V

United States House of Representatives Committee on Standards of Official Conduct

IN THE MATTER OF REPRESENTATIVE MICHAEL J. MYERS

INVESTIGATION PURSUANT TO H. RES. 608

REPORT OF THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

The House Committee on Standards of Official Conduct submits this Report in support of its recommendation to the House of Representatives, pursuant to Article I, Section 5, Clause 2 of the United States Constitution and Rule 17 of the Committee's Rules, that Representative Michael J. Myers [1] be expelled from the House.

A. PROCEDURAL HISTORY

On February 2, 1980, reports were widely circulated in the media to the effect that a number of named Congressmen were allegedly involved in a so-called "ABSCAM" investigation being conducted by the Department of Justice. Mr. Myers was one of those so named. On February 22, 1980, the Committee's Special Counsel wrote to the Congressmen identified in the press, including Mr. Myers, indicating that the Committee staff was assembling evidence in an effort to determine whether the Committee should initiate a preliminary inquiry into the ABSCAM matter, and inviting Mr. Myers to appear before the Committee and present whatever information he deemed pertinent (Myers Exhibit I). Through his counsel, Mr. Myers on February 26, 1980, declined the invitation to appear (Myers Exhibit J).

On March 27, 1980, the House of Representatives overwhelmingly passed House Resolution 608, which "authorized and directed" the Committee "to conduct a full and complete inquiry and investigation of alleged improper conduct which has been the subject of recent investigations (commonly referred to as ABSCAM) by the Department of Justice * * *," and to "report to the House of Representatives its recommendations as to such disciplinary action, if any, that the committee deems appropriate by the House of Representatives * * *" (Myers Exhibit A).

Pursuant to Section 6 of that Resolution, Special Counsel entered into an agreement with the Department of Justice on March 27, 1980, covering the receipt of confidential information in respect to the investigation. On July 11, 1980, the United States District Court for the Eastern District of New York entered an order permitting the Department to grant the Committee access to certain information and materials in the custody of the Grand Jury and the Department relating to ABSCAM (but excluding Grand Jury transcripts), provided the Department was given ten days' notice prior to any public disclosure of those materials (Myers Exhibit K).[2] Pursuant to the court's order, Special Counsel thereafter began receiving materials from the Department, including copies of all relevant audio and video tapes.

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[1] Representative Myers was indicted and convicted as "Michael O. Myers," apparently because he had so identified himself in the Congressional Directory, his commonly-used nickname being "Ozzie." His given name is Michael Joseph Myers.

On May 27, 1980, Mr. Myers and three others were indicted by a Federal Grand Jury in Brooklyn, New York, on charges of bribery, conspiracy and violations of the Travel Act, Sections 201(c), 371 and 1952 of Title 18, United States Code, respectively. On August 30, 1980, after a fourteen-day trial, all four persons were found guilty by a jury of all three offenses.

On September 3, 1980, pursuant to House Resolution 608 and Rules 11(a) and 14 of the Committee's Rules, the Committee voted to commence a preliminary inquiry into the Myers matter (Myers Exhibit B). Mr. Myers and his counsel were immediately notified of the Committee's action and were afforded an opportunity to present written or oral statements to the Committee (Myers Exhibits C and D). Shortly thereafter, extensive portions of the trial record, including both audio and video tapes, were stipulated to be part of the record of the Committee's inquiry by counsel for Mr. Myers and Special Counsel to the Committee (Myers Exhibits F and G). Those portions of the written record were distributed to the offices of Committee members on September 8, and audio and video tapes were made available for inspection at the Committee offices on the same day.

Pursuant to a request by his counsel (Myers Exhibit E), Mr. Myers personally appeared before the Committee on September 10, 1980, and gave a sworn statement (Appendix 1 to Special Counsel's Report). In a motion made orally on September 10 and confirmed in writing on September 11, 1980 (Myers Exhibit H), Mr. Myers' counsel moved that the Committee keep open its preliminary inquiry until the courts finally decide whether his due process rights had been violated by the Government prior to and during the prosecution of his case. The Committee voted to deny this motion at a meeting on September 16, 1980 (Myers Exhibit P). At that same meeting, the Committee passed the following Resolution:

> Pursuant to Rule 14 of the Committee's Rules, the Committee, having reviewed the evidence relating to the conviction of Representative Michael O. Myers in the United States District Court for the Eastern District of New York for the offenses of violating Sections 201(c), 371 and 1952 of Title 18 of the United States Code; and upon consideration of the Report of Special Counsel Upon Completion of Preliminary Inquiry filed September 10, 1980, in the above-captioned matter, and of all relevant evidence, including the exhibits and record herein and the statements submitted by Repre-

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[2] Such notice, to the extent that it was still required after the materials were made public at the Myers trial, was given by letter from Special Counsel to the Department of Justice and to Mr. Myers on Sept. 3, 1980 (Myers Exhibits L and M).

> sentative Michael O. Myers on September 10, 1980, now determines that such offenses were committed and constitute violations over which the Committee is given jurisdiction under Clause 4(e) of Rule X of the Rules of the House of Representatives, including House Rule XLIII, Clauses 1–3, and it is hereby:
>
> *Resolved*, That the Committee shall proceed promptly to hold a disciplinary hearing for the sole purpose of determining what sanction to recommend that the House of Representatives impose on Representative Myers for these offenses; and Be It Further
>
> *Resolved*, That Representative Myers and his counsel shall be promptly advised of this action and informed of the Member's rights pursuant to the Rules of the Committee. [Myers Exhibit Q.]

Pursuant to that Resolution, Special Counsel informed Mr. Myers through his counsel that same day, September 16, of the two actions of the Committee and notified him of his rights (Myers Exhibit N). In addition, Special Counsel on the following day sent a letter (Myers Exhibit O) to Mr. Myers' counsel enclosing a copy of Special Counsel's Report to the Committee.

On September 22, 1980, Mr. Myers filed with the Committee a motion seeking reconsideration of his motion to defer the preliminary inquiry or, in the alternative, to defer the Committee's disciplinary hearing (Myers Exhibit R). Special Counsel responded the following day, urging that the motion for reconsideration be denied (Myers Exhibit S). On September 24, the Committee denied Mr. Myers' motion.

At that same hearing on September 24, Special Counsel reviewed with the Committee certain evidence which had already been made a part of the record before the Committee and which related to sanctions. Special Counsel also presented oral argument. In addition, the Committee heard evidence submitted by Mr. Myers' counsel, consisting of statements from Mr. Myers and Representative Austin J. Murphy, as well as oral argument from Mr. Myers' counsel. Transcripts of Mr. Myers' and Mr. Murphy's testimony are attached.

B. THE COMMITTEE'S RECOMMENDATION

The extensive evidence admitted at the Myers trial is summarized in the Report of Special Counsel Upon Completion of Preliminary Inquiry, which was received by the Committee and which is attached to the instant Committee Report. Substantial testimony against Mr. Myers was given by a number of witnesses, including agents of the Federal Bureau of Investigation and an informer. Numerous audio and video tapes were presented at trial. In addition, the trial court charged the jury that in order to convict, it must find that Mr. Myers received money at the time he was a public official in return for being influenced in his performance of an official act, and that he acted with specific intent and in a knowing, willful and corrupt manner. Nevertheless, the Committee has based its own recommendation to the House primarily upon the words of Mr. Myers himself. These appear in three forms: on video and audio tapes, in his testimony on his own behalf at trial, and in his sworn statement before this Committee.

Mr. Myers has admitted being asked by a friend—not by someone in the Federal Government—to attend a meeting with a rich Arab who was willing to pay substantial sums of money to be introduced to 'important people" (Tr. 2710, 2712).[3] Mr. Myers admits he was told that he himself would receive part of this money (Tr. 2711). He was told that at the meeting, "immigration" might be discussed, because the Arab "might have to try to come to America" (Tr. 2712). Mr. Myers agreed to attend that meeting (Tr. 2713).

Mr. Myers has not denied that at the meeting he took an envelope containing $50,000 from a man whom he thought was a representative of foreign Sheiks, but who in fact was an FBI undercover agent (Tr. 2739, 2741–2; Ex. 5A at pp. 1, 29). Indeed, Mr. Myers told this Committee that he thought at the time that the envelope contained $100,000 instead of $50,000 (App. 1, p. 67).

Neither does Mr. Myers deny that he promised the purported representative of the Sheiks, in return for the money, that at the appropriate time he would introduce private bills in Congress in order to guarantee the Sheiks' uninterrupted stay in this country or at least to delay their departure after they were here, and would use his influence at the State Department to help bring about the same results. He is shown on a videotape making these promises (Ex. 5A, pp. 3,4,6,7,9, 13–14,21), and he admitted before the Committee that he would have promised the Sheiks' representatives anything they asked (App. 1, pp. 66, 68).

Mr. Myers similarly does not deny that at a subsequent meeting he expressed disappointment at having eventually received only $15,000 of the $50,000 originally handed to him, and that he thereupon agreed to an arrangement whereby he would be given not only the $35,000 which he thought was still owed him, but an additional $50,000 for promising to take action on the "local" level in Philadelphia. The local matters as to which the Sheiks allegedly thought they might have future problems and as to which Mr. Myers promised his help included dealing with the Mafia, the City Council, the port authority, zoning authorities, and labor groups.[4]

Mr. Myers' present defense to these acts, as it was at trial, is that he was told in advance of the crucial meetings that he was about to engage in play-acting and a charade, that he would never have to do anything affirmative in return for the money except make the requisite promises, and that the Sheiks would not even be coming to this country (*e.g.*, Tr. 2712–13, 2717, 2718). In addition, he claims that he was intoxicated during the meeting with the Sheiks' representatives that occurred after he was paid.[5]

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[3] "Tr." references are to the trial transcript, attached as Appendix 3 to the Report of Special Counsel Upon Completion of Preliminary Inquiry.

[4] *E.g.* Ex. 7A at pp. 48, 51, 52, 54, 64–65, 80–81, 83–87, 93, 97, 114–115, 138, 142, 147–149, 151, 153, 154, 172.

He did not actually receive the additional $85,000. The money apparently was to have been delivered on February 2, 1980, the day the ABSCAM investigation was reported in the media (*see* Tr. 2587–88).

[5] *E.g.*, Tr. 2787A, 2794, 2796. It should be noted, however, that he does not claim to have been intoxicated at the meeting when he was paid, or on at least three occasions—subsequent to the time he claimed to be intoxicated—when the same money transactions were discussed (Ex. 8A; Ex. 9A; Ex. 10A).

The Committee has found, as the jury apparently did, that Mr. Myers' story is inherently unbelievable and is contradicted by events revealed in the tapes. Moreover, even if we were to accept Mr. Myers' testimony at face value, we still would conclude that his conduct was in violation of the most fundamental standards for Congressional conduct. Mr. Myers has not explained why wealthy foreigners would pay substantial sums of money in return for a wholly fictitious charade if they knew it was a charade, or if they did not know it was a charade, why Mr. Myers was entitled to take these sums upon promising to use his influence in the performance of his official duties.

The Committee can only conclude—as the tapes conclusively show—that Mr. Myers was sincere in his belief that he was dealing with persons willing to pay for his influence as a Representative, that he took money in return for promising to use that influence on their behalf, and that he thereby acted corruptly, in violation of law, and in total disregard of his duties and obligations as spelled out in Clauses 1 through 3 of House Rule XLIII.

The Committee fully recognizes that expulsion is the most severe sanction the House can impose. The Committee does not make its recommendation lightly. But the facts and circumstances of this case cannot be ignored or condoned. The evidence in this case—a case based not on hearsay, conflicting eyewitness accounts, inferences, and the like, but upon the Representative's own words and acts, recorded and in person—is clear and convincing. That evidence demands the strongest possible Congressional response.

This case, unfortunately, comes down to a blatant one of personal greed being allowed to overcome a Representative's sworn duty, a case of trading a promise of votes and influence for money. The Committee submits that expulsion is the only Congressional sanction that fits the crimes committed by Representative Myers.

Accordingly, the Committee recommends that the House adopt a Resolution in the following form:

HOUSE RESOLUTION

> *Resolved*, That, pursuant to Article I, Section 5, Clause 2 of the United States Constitution, Representative Michael J. Myers be, and he hereby is expelled from the House of Representatives.

* * * * *

STATEMENT PURSUANT TO RULE XI, CLAUSE 2(1)(3)(A)

The Committee makes no special oversight findings in this report.

This report was approved by the Committee on Standards of Official Conduct on September 24, 1980, by a vote of 10 to 2.

* * * * * * *

DISSENTING VIEWS OF REPRESENTATIVES LEE H. HAMILTON AND LOUIS STOKES

We respectfully dissent from the action taken today by our colleagues on the Committee.

Our dissent should not be considered in any way as an approval of what Representative Myers did, as revealed in the trial transcript, the videotapes, and his own testimony before our Committee. On the contrary, we find his actions reprehensible, and were we to have to vote now on the merits of the sanction to be recommended to the House, we might well join our colleagues who voted for expulsion. Our difficulty arises because we do not believe, in good conscience, that the Committee should be voting on the merits at this juncture in Representative Myers' criminal proceeding.

We begin with a fact of history. Only three Representatives since the founding of the Republic have been expelled from the House, and all three of those expulsions occurred in 1861. Surely if we are to take this extraordinary step once more, after an intervening period of over a hundred years, we must do so with meticulous regard for the Rules of the House, for commonly understood principles of criminal law, and for prevailing concepts of fair play. The three previous expulsions were based upon treasonous acts. No Member has ever been expelled for any act less than treason. If we are to depart from that precedent, it should be for extremely compelling reasons. Those reasons are not present when the criminal proceedings against Mr. Myers are not completed.

The Committee chose to proceed under Rule 14 of its Rules. Rule 14 instructs the Committee to conduct a preliminary inquiry only if a Member is "convicted." In our view, Representative Myers has not been convicted, because the United States District Court for the Eastern District of New York has not yet found Mr. Myers guilty and still has before it a motion raising serious questions relating to whether Representative Myers was accorded his rights to due process of law. His motion asking for a dismissal of his indictment on the grounds of alleged governmental misconduct was timely filed, but the court was unable to act upon the motion prior to trial. The court has stated, however, that it will hold a hearing on the motion in due course and will then issue a ruling either granting or denying it. If the court grants the motion, the effect could be to vitiate entirely the very "conviction" that formed the basis of the Committee's preliminary hearing. At the least, a granting of the motion would result in a new trial that in turn might or might not lead to another conviction. At the most, a granting of the motion would not only overturn the conviction but preclude another trial because of egregious governmental misconduct.

In our view, therefore, in no meaningful sense can it be said that Representative Myers has been "convicted." On the contrary, he has reached only the first milestone along a road of many junctions that might or might not lead to a conviction.

This Committee could thus find itself in the wholly untenable position of having expelled a Member who has never been—and may never be—convicted of a crime.

There is a further problem with proceeding now under Rule 14. That rule requires the Committee to review "the evidence" of the alleged offense. We cannot review all of the evidence relating to the offenses with which Representative Myers is charged because much of that evidence has not yet been produced. At the due process hearing still to be held by the District Court, Representative Myers and his codefendants hope to develop evidence showing that they were, on improper grounds, selectively targeted for investigation, that they were lured into committing acts that they had no intention of committing, that the government manufactured crimes which otherwise would not have occurred, that the defendants were improperly selected for prosecution, and the like. We do not even intimate, of course, that these charges may have substance. We would merely point out that attempting to prove them will necessarily result in the production of "evidence" that relates to an "offense" under Rule 14 and that should therefore be reviewed by the Committee.

There is a final reason why we believe that the Committee's action here not only violates the Committee's own Rules but violate fundamental fairness to Mr. Myers. The Committee has acted during the final weeks of its current session, and the expulsion Resolution will go to the Floor during the closing days before the House recesses and only a few weeks before the general election. The political pressures on Members to act, and to expel someone who admittedly engaged in reprehensible conduct, will be overwhelming. We do not think this is the atmosphere in which an issue of this magnitude should be decided. The question before us requires cool and studied deliberation. The integrity of the House is at stake, but so is a Member's future, as well as the rights of his constituents.

We reemphasize that we do not speak to the underlying merits except to express our disgust with much of what was revealed to the Committee. But whatever the ultimate decision should be with regard to an appropriate sanction, that decision should not be reached under the heat, glare and pressure of time and extraneous political considerations.

LEE H. HAMILTON.
LOUIS STOKES.

Attachment I to Report of Committee on Standards of Official Conduct

HEARING RE MICHAEL J. MYERS

WEDNESDAY, SEPTEMBER 24, 1980

House of Representatives,
Committee on Standards of Official Conduct,
Washington, D.C.

The committee met, pursuant to notice, at 9:30 a.m., in Room 2359–A, Rayburn House Office Building, the Hon. Charles E. Bennett (chairman) presiding.

Present: Representatives Bennett, Spence, Hamilton, Hollenbeck, Preyer, Livingston, Fowler, Thomas, Stokes, Sensenbrenner, Rahall, and Cheney.

Also present: E. Barrett Prettyman, Jr., Special Counsel for CSOC; Allen R. Snyder, Assistant to Mr. Prettyman; Plato Cacheris, Attor-

Staff present: John M. Swanner, Staff Director.

The Chairman. The committee will come to order.

I recognize Mr. Prettyman.

Mr. Prettyman. Mr. Chairman, members of the committee, there are a couple of housekeeping matters before we begin.

First of all, there will be portions of tapes played today. There is a Second Circuit order in effect which prohibits anyone from giving physical access to these tapes to the media for replaying on television or in public.

I don't know whether there is any equipment here which could possibly take these tapes and replay them, but if there is, I would suggest that the Chairman direct that not be done.

The Chairman. They would be in contempt of court and might place themselves in criminal difficulties if they did.

Mr. Prettyman. Yes, sir.

The Chairman. Everybody is on notice about that.

I don't think anybody intends to do that. There is this court decision which I presume would lead to a contempt proceeding if anybody made copies of this material that is being shown on the TV, or will be.

Mr. Prettyman. The second item is that we have had previously identified and received by the committee Exhibits A through H, and I would at this time like for the committee to receive the following additional exhibits to complete our record.

As Exhibit I, Special Counsel's letter to Representative Myers dated February 22, 1980, informing him of his right to appear before the committee.

As Exhibit J, Mr. Cacheris' letter to Special Counsel dated February 26, 1980 responding to that letter.

As Exhibit K, Judge Jacob Mishler's order of July 11, 1980.

As Exhibit L, Special Counsel's letter to Mr. Nathan of the Department of Justice dated September 3, 1980 relating to notice under Judge Mishler's order.

As Exhibit M. Special Counsel's letter to Mr. Cacheris of the same date relating to the same matter.

As Exhibit N, Special Counsel's letter to Mr. Cacheris dated September 16, 1980 enclosing two resolutions passed by the committee that day.

As Exhibit O, Special Counsel's letter to Mr. Cacheris dated September 17, 1980, enclosing a copy of Special Counsel's report.

As Exhibit P, the resolution passed September 16, 1980, by the committee relating to the motion to hold open the proceedings.

As Exhibit Q, the resolution passed September 16, 1980 by the committee relating to ending the preliminary inquiry and entering the second phase of the disciplinary hearing.

As Exhibit R, the motion by respondent Myers for reconsideration of his motion to defer the preliminary inquiry.

And, as Exhibit S, Special Counsel's response to that motion.

I would ask that the committee receive those exhibits as part of the record.

The CHAIRMAN. Any objection?

Mr. CACHERIS. No objection. They are all authentic documents.

The CHAIRMAN. Without objection, all are accepted into the record.

[Documents marked Exhibits I through S were received into evidence.]

Mr. PRETTYMAN. I would suggest, Mr. Chairman, that now might be the proper time to take up what is Exhibit R, namely respondent Myers' motion for reconsideration of the committee's original ruling not to defer the preliminary inquiry.

I have responded to that in some detail in writing. The committee has received my response. Unless there are questions, I would not argue the motion orally.

I think it has been fully decided by the committee previously and decided correctly, and I see nothing in the application by respondent Myers that would change that, and, as a matter of fact, there are several items in his motion which I think support the position that the committee has taken.

The CHAIRMAN. Respondent Myers or his attorney, do you wish to address this?

Mr. CACHERIS. Yes.

I take issue with Special Counsel. I do not think the committee has correctly resolved that issue.

None of the cases that have been cited both by us and by Special Counsel have ever dealt with a situation that is vital in this case. In every other case where there has been a determination of conviction, it has come when there are post-trial motions pending, and while I do not mean to be legalistic with this committee, I think it is a point this committee should seriously consider.

You have awaited the trial of Mr. Myers as such before you proceeded for this phase one hearing. The fact is, the trial is not complete. The trial is still pending before the District Judge, not just on the matter of sentence, but on the matter of a hearing that is vital to the rights of this Congressman.

There are questions pending before the court as to why Mr. Myers and other members of Congress were targeted, why they were brought into this so-called ABSCAM investigation. The resolution of those issues can well vacate the entire proceedings and the entire conviction, and therefore I suggest to you, gentleman, that this proceeding could be rendered a nullity.

This is not a question of a routine post-trial motion after conviction awaiting sentence. This is a question vital to the concerns not only of this congressman, but should be vital to the concerns of all congressmen because many names were mentioned in the tapes that you have probably seen.

Your rules, Rule 4, and you are the lawmakers, do not define what a final conviction is. You failed to define what a final conviction is.

In every other instance where this committee has acted in regard to a congressman who has been convicted, it has always been subsequent to the trial and subsequent to sentence.

This case is being treated differently and is being treated unequally. I again urge this committee to examine the record in this which is replete and unequivocal that the trial has not yet been completed and this committee is stampeding itself, for reasons I do not know, into proceeding when this man's rights have not been fully adjudicated before a court.

Mr. PRETTYMAN. May I respond briefly, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. PRETTYMAN. The committee waited until the end of trial so it could see all of the evidence related to what this man did. The committee has now seen and read what this man did. The committee has heard him say before the committee what he did.

What is now before the committee is the narrow issue of sanctions relating to what he did. I submit that all of the evidence that is necessary for you to decide that on your own, unrelated to future court proceedings, is fully before you and that the committee can act.

Mr. CACHERIS. May I respond to that, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. CACHERIS. This very committee delayed imposition of a disciplinary hearing on a congressman named Langley because Mr. Langley had a petition pending before the Supreme Court of the United States.

Mr. Myers is in a far different position.

The CHAIRMAN. What year was that?

Mr. CACHERIS. I don't know the year. It is a matter of record in your report in the matter of Representative Diggs. It is set forth on page 145 and 146.

The CHAIRMAN. My only point is Rule 14 is a fairly new rule. That is what we are operating under here. It would not really be very pertinent unless it was after the passage of Rule 14.

I don't remember a Congressman Langley since I have been here. I have only been here 32 years.

Mr. CACHERIS. Well, he is mentioned in your report. You were Chairman of the committee.

The CHAIRMAN. It was prior to the enactment of this rule?

The rule specifically says when there is a conviction that the committee must determine that an offense was committed after looking at the evidence in that trial and then it makes the decision on the basis of that evidence that was submitted.

This is just a shorter procedure as a method of taking and getting evidence.

In other words, when there is a conviction, they can look at the evidence taken in that conviction, and Rule 14 allows them to proceed.

Mr. Langley was—I have been informed—was a 19th Century matter. It was long before the Rule 14 was enacted.

Mr. CACHERIS. But the fact still remains that the trial of Mr. Myers is not completed.

In no instance has this committee acted, regardless of when, that the trial is not completed.

The CHAIRMAN. There is nothing in Rule 14 dealing with when the trial is completed. It is merely a statement of whether there is a conviction or not.

Mr. CACHERIS. There is no definition of what a conviction means.

The CHAIRMAN. This committee is going to determine what that is.

Mr. CACHERIS. I suggest the committee, since it waited for the completion of the evidentiary phase of the trial, should await the completion of the evidentiary phase of the due process hearing which is still pending before the very District Judge that heard the trial.

The CHAIRMAN. The problem the committee will have on that, of course, is that this could be years. There is no way of determining it.

Mr. CACHERIS. That is not correct, sir. It will not be years. It will not be a matter of appeal. It is a question that is pending right now.

The Judge has indicated that he will set a due process hearing very promptly.

The CHAIRMAN. Well, that is an editorial comment that it could or could not be years. There is nothing that would prevent the Judge from postponing it for years.

Mr. CACHERIS. Yes, there is, sir. I disagree with you sincerely.

The Judge has stated on repeated occasions he will set the due process hearing before a final sentence in this case.

I suggest to you, sir, he will not wait for years in order to impose a sentence in that case.

The CHAIRMAN. That is an editorial comment about what might happen. I am talking about what could happen. What could happen is that it could be for years.

Mr. CACHERIS. I disagree with you.

The CHAIRMAN. Give me law on that.

Mr. CACHERIS. It is not a question of law. It is a question of a Federal Judge stating in open court on the record there will be a due process hearing before this case is completed. It is not a question of years.

Well, he didn't say that, Mr. Chairman but it is obvious and implicit that it will not be a question of years.

Mr. PRETTYMAN. Mr. Chairman, I didn't realize we were going to go as long on this. May I say two things briefly?

First of all, I was informed by the Judge's office that the due process hearing would not be held until there was a consolidated hearing relating to three congressmen.

Therefore, everything depends on whether and when those other trials take place. I disagree with my friend, Mr. Cacheris. That may be some time. There is a much more important point.

In order to adopt his position, you would have to rule, in effect, that the due process hearing is relevant to the determination in front of you.

I submit on the showing in my papers that it is not relevant, that you have seen and heard the evidence that is necessary for you to determine the matter before you today.

It may be that the government has acted improperly in some fashion. It may be that the government has done something wrong, but that does not affect what we are about to see on the screen and what Mr. Myers has told us himself. On that you can act.

Mr. CACHERIS. If the government has done something wrong, and if the government has acted improperly, I suggest to you this conviction will be vacated.

That is the position we take.

You are basing your whole resolution on the basis of a conviction that may be vacated and may be vacated not in a question of years, Mr. Chairman, not because——

The CHAIRMAN. It may not be years, but it is an undetermined length of time. What I am saying is, it could be years. It could be never. There is nothing that requires the Judge to do this.

Mr. CACHERIS. Oh, yes, there is.

The CHAIRMAN. What?

Mr. CACHERIS. The Judge has committed himself. The law requires him to hold a due process hearing.

The CHAIRMAN. That is what I am interested in. The law.

Mr. CACHERIS. If you are interested in the law——

The CHAIRMAN. I would not have asked if I hadn't been interested.

Mr. CACHERIS. I say respectfully the Judge has stated there will be a due process hearing. That is unassailable. That can't be contradicted.

The CHAIRMAN. No one is trying to contradict what the Judge said. What I am interested in is what the law is.

Mr. CACHERIS. The law is spoken by the Judge. In this case he has spoken as to the law in this case. There will be a due process hearing.

Mr. LIVINGSTON. Mr. Chairman?

The CHAIRMAN. Mr. Livingston?

Mr. LIVINGSTON. Counsel made the statement we are basing our findings on the foundation of the conviction, and I think that is not entirely accurate in view of past proceedings.

My understanding, I think, what counsel has pointed out, is that our findings have been made on the basis of the conviction plus the evidence that we have reviewed, and so whatever the law finds in the future with regard to procedures in this case, really has no relevance whatsoever to our findings to date.

The CHAIRMAN. That is my view of the law.

Mr. Stokes?

Mr. STOKES. Thank you, Mr. Chairman.

I am concerned about the question raised by Mr. Cacheris with reference to the fact that a trial is still pending. We are not in the state of affairs where the question of appeal is being raised, but the question of fact that a trial is still pending in light of the due process hearing that is now pending.

I would like to have Mr. Prettyman address himself to that specific question as to whether counsel is correct in the sense that trial has not been completed due to the pending due process hearing. Secondly, I would like to have him address himself to the question of the status of any finding by this committee in the event that the Court does, as a result of the due process hearing, hold that the conviction is invalid and set it aside.

Mr. PRETTYMAN. Certainly.

In my view the trial has been completed. What we now have is, in effect, a post-trial hearing, a hearing which could have been held ahead of time except that it came too late.

It will be a hearing which will not address the merits of the trial itself and, as a matter of fact, the Judge explicitly excluded at the trial evidence solely on the due process points and said that he would hear that himself; not the jury, but the Judge would hear those arguments himself, maybe take testimony after trial that relates to the conduct of the government which is alleged in the motion.

That is a typical post-trial hearing. Many of them occur ahead of the trial. Some of them after.

As a result of that motion and hearing, the Judge could determine that the trial was vitiated and that there should be a new trial, or he could hold that the trial was vitiated and the conduct of the government was so bad that there could be no new trial.

My position is that, regardless of what the Government did, which is a problem really for the Judiciary Committee, the fact is that there has been established a record both in court and before this committee, which is complete.

Mr. Myers does not claim that he has anything further to say about his basic story about what occurred here. We gave him every opportunity at our last meeting to give his story and he gave it.

As you will see shortly, I contend that this committee can act on the basis of his story alone.

Now, in my view, to answer your second question, a subsequent ruling by the court vitiating the trial because of Government misconduct would have absolutely no effect upon the action of this committee.

This committee can take evidence at any time that it wants to and act upon it. It could have had Mr. Myers in here and asked him his story without any trial evidence.

We had the advantage of sworn testimony at the trial. We had the advantage of tapes which are not going to be changed regardless of what any judge says in the future.

We have the advantage of the congressman's own story, and this committee, I feel, has not only the right, but the constitutional duty and the duty under its own rules to proceed promptly and now on the basis of whatever it selects.

I would remind you the evidence that is in this volume was selected as a result of a stipulation as to what would be relevant by counsel for Mr. Myers and myself.

Mr. **Cacheris**. May I respond to that? I take serious issue with my friend, Mr. Prettyman. This is not a routine post-trial motion. This is a motion that was made at the threshold of the trial, pre-trial. The Judge decided that it was a motion that did not require the jury's intervention, but he did also rule that it is a motion that will have to be heard and it is a motion that will go to the very integrity of the prosecution. I take a second issue with Mr. Prettyman that if the Judge were to rule that Mr. Myers was unfairly targeted by the Government—and this will require evidence by Government agents—that he could vitiate the entire proceedings, and I suggest to you it would be akin to a suppression, and that this committee would not be permitted to view evidence that had been suppressed in a judicial setting because it would be evidence that was improperly gathered.

I don't think this committee would do violence to the Constitution and hear evidence that was not properly admitted before a court.

The matter is still pending before the Judge. It is not a question of Mr. Myers or his counsel raising a post-trial motion; quite the contrary. It is a motion that was raised well in advance of trial and went to the integrity of the prosecution.

Mr. **Prettyman**. Mr. Chairman, finally, just one more word: This is not like a suppression of evidence motion. This is a so-called Twigg motion. It goes to the conduct of the government. It claims the government acted so outrageously in setting up this scheme that the government should not be allowed to prosecute these people.

That does not go to the basic integrity of this evidence. The evidence will stand for all time, and this committee cannot ignore it.

Mr. **Thomas**. Mr. Chairman?

The **Chairman**. Mr. Thomas?

Mr. **Thomas**. Is my assumption correct that if the evidence had been made available by the Justice Department and by the court, that the proceedings of this committee would have been initiated earlier? That if the evidence had been made available prior to the conviction, we would have been out of the process?

My concern is that the timing is focused—defense counsel's point is focused on the timing of when we began. Rule 14 was available only because evidence was not allowed—available to us until after the conviction. Rule 14 is a convenience. Under our rules in other sections we could have initiated proceedings if evidence had been available.

The Justice Department denied us access

Mr. **Cacheris**. That is not correct, sir. Mr. Prettyman himself has had the very tapes that he is about to play for you in advance of trial, in advance of trial. It was not made available subsequent to trial. He has had it for some period of time. He can give you the date. I think it was in June.

Mr. **Prettyman**. I think, Mr. Cacheris, this is the point Congressman Thomas is making. It is a very good one. This committee made the deliberate decision not to proceed in advance of trial simply because it did not want to jeopardize the prosecutorial process. But this committee had the power to proceed in advance of trial, could have subpoenaed the tapes and testimony, or—once it got the tapes and testimony, it could have proceeded immediately. And I might say, if you will remember, we had some very heated discussions about whether we should not do that.

The committee decided that it would await the end of the trial simply so as not to jeopardize that prosecutorial process If we had, in fact, taken those tapes, taken that evidence, and proceeded with our hearing, how could we be hearing the kind of argument that we are hearing today?

Mr. **Cacheris.** Since the committee decided to wait for the completion of the trial, my point becomes more significant. The trial is not complete.

The **Chairman.** Anyone want to inquire further?

Mr. **Spence.** Mr. Chairman, it might be well to point out that there are differences in ethical considerations and the considerations you have in the Federal court from the standpoint of a criminal trial.

As a matter of fact, even if one of the people involved in these Abscam trials were acquitted, it would not mean that we couldn't, on our own, independently, determine these people have been guilty of ethical violations.

Mr. **Cacheris.** That is correct, Mr. Spence.

I might point out to you that I think this committee's assessment of the evidence would be far different than what I think it is now.

The **Chairman.** Any further questions?

If not, as far as I am concerned, we can decide this in an open meeting. You can have an executive meeting and discuss it if you want to, have a recess, everybody leave and come back later. But if nobody has any objection, I would think we can vote on it right now.

The request is from the Special Counsel to—so the vote would be on a motion by the—not by the Special Counsel, but by Mr. Myers. So we have a motion by Respondent Myers for reconsideration of the motion to defer preliminary inquiry or in the alternative to defer disciplinary hearing.

So the vote will come on whether we agree to that motion or deny it. A yea vote will be in favor of the motion, a nay vote will be in opposition to the motion being granted.

We won't divide it unless somebody wants to have it divided.

Call the roll.

Mr. **Swanner.** Mr. Bennett?

The **Chairman.** No.

Mr. **Swanner.** Mr. Spence?

Mr. **Spence.** No.

Mr. **Swanner.** Mr. Hamilton?

[No response.]

Mr. **Swanner.** Mr. Hollenbeck?

Mr. **Hollenbeck.** No.

Mr. **Swanner.** Mr. Preyer?

Mr. **Preyer.** No.

Mr. **Swanner.** Mr. Livingston?

Mr. **Livingston.** No.

Mr. **Swanner.** Mr. Fowler?

Mr. **Fowler.** No.

Mr. **Swanner.** Mr. Thomas?

Mr. **Thomas.** No.

Mr. **Swanner**. Mr. Stokes?

Mr. **Stokes**. No.

Mr. **Swanner**. Mr. Sensenbrenner?

Mr. **Sensenbrenner**. No.

Mr. **Swanner**. Mr. Rahall?

[No response.]

Mr. **Swanner**. Mr. Cheney?

Mr. **Cheney**. No.

Mr. **Swanner**. Mr. Chairman, 10 members answer no, 2 members are absent.

The **Chairman**. Mr. Prettyman?

Mr. **Prettyman**. Mr. Chairman, members of the committee, the committee has already had before it for about 2½ weeks the relevant evidence introduced at the trial against Congressman Myers. I will certainly not attempt to re-present or re-review all of that evidence today. I will not even attempt to sketch in the basic outlines of Abscam itself. That story is too well known to the committee to bear repeating here.

We know how this endeavor began, how it progressed, how it culminated in unfortunate leaks to the press on February 2, 1980. We know Congressman Myers was convicted of three violations of the United States Code, and what those offenses were.

My evidence today will primarily be part of three videotapes, some of which the committee has already been shown as a group. The tape excerpts will last a total of about 45 minutes.

I must, however, give you a little background so as to put these tapes in perspective. I apologize in advance for some of the language that will be used both on the tape and by me. The language is not mine. I don't feel that this is the time to censor or sanitize what the participants actually said.

Mr. Myers first surfaced—his name first surfaced in Abscam in a recorded conversation on July 29, 1979 between Mr. Weinberg, the informer, and Mr. Errichetti, the Mayor of Camden, New Jersey. That is Exhibit 19A.

Mr. Errichetti brings up the name as someone for the sheiks' men to meet.

Then on August 5, 1979, at the lounge in the JFK Airport, Mr. DeVito, an undercover FBI agent, Mr. Weinberg, Mr. Errichetti were recorded in Exhibit 1A, Mr. Errichetti saying, "I have met with Myers and I talked to him like I am talking to you."

Mr. Weinberg says, We need a few days to get the cash out of the bank.

Mr. **Errichetti**. He—meaning Myers—will do anything. He is going to be your fucking man period. Anything you want. Weinberg has got to tell Yassir—one of the Arabs—when time comes I will sponsor anything you want, and Errichetti twice said, he'll say that.

Then on August 6, 1979 in Exhibit 2A at the Hyatt House in New Jersey, Mr. Weinberg on Myers—I am arranging for money next week.

Mr. **Errichetti**. He's all set. He's all set.

Finally, on August 8, 1979, in Exhibit 4A, meeting between Mr. Errichetti, Mr. Weinberg, and Mr. DeVito at the Hyatt House in New Jersey.

Mr. Weinberg. Will try to push as fast as possible on Myers.

Mr. Errichetti. He's ready, willing and able tomorrow morning.

Mr. DeVito. He would have to introduce some kind of legislation, right, some kind of bill or something.

Mr. Errichetti. Whatever you say. I will naturally talk to Ozzie first.

That leads to the first tape, to the key meeting on August 22, 1979, which was videotaped. It is a meeting between Mr. Myers; Mr. Weinberg, the government informer; Mayor Errichetti; and Mr. DeVito or Mr. Amoroso, depending upon which name this FBI agent is using.

If you would each turn to Tab 1 in the book in front of you, you can follow the portion of the tape that will now be played.

[Videotape 1 was shown.]

Mr. Prettyman. If the committee would now turn to Tab 2, which is part of the same tape, Exhibit 5A.

The Chairman. I am not trying to cut you short, but of course the committee already heard everything we just now heard. You are just emphasizing it?

Mr. Prettyman. I am, your Honor. I think they are key to the discussion today. There are other parts you have not heard as a group that are coming up.

Mr. Cacheris. I move to exclude all of it on the basis of redundancy. You have heard it all in its completeness. These are excerpted versions.

The Chairman. It will be allowed in. We are kind of busy. We have heard it once. I certainly want to hear anything you feel is pertinent. You go ahead as you wish.

[Videotape 2 was shown.]

Mr. Prettyman. If you turn to Tab 3.

The Chairman. Of course, I realize after having said what I said that the other hearing we had was not in front of the public, so it is of value. In other words, the public is seeing what we are seeing.

Mr. Fowler. I think you ought to emphasize to counsel and to Mr. Myers that though we could cut our Special Counsel's part short any time that we desire, because we have heard it, it is certainly not going to cut their side short.

The Chairman. No.

Mr. Fowler. You can hear anything you want to hear or anything you want shown, if you feel this is incomplete in any way, counsel, and want the full tapes. Then I think the chairman would say you have the right to have it.

Mr. Cacheris. What is not being shown, of course, is what would have been developed through a due process hearing. That is not available.

The Chairman. That isn't in the film, I don't think.

Mr. Cacheris. Of course it isn't. That is the point. That is why the case is still pending before a Federal judge.

[Videotape 3 was shown.]

Mr. Prettyman. The Committee will recall that there was evidence to the effect that although Mr. Myers was given $50,000 in that envelop, Mayor Errichetti, Mr. Criden and his partner skimmed $35,000 off of the top of it, so by the time Mr. Myers got back to Philadelphia and received his packet, it contained only $15,000.

We move now to January 24, 1980. On that date in a meeting with FBI agent Wald, using the name Cohen; Mr. Criden; Mr. Haridopolos, using the name of Mr. Poulos; another FBI agent, Mr. Myers promises to use his influence and connection to take care of the Mafia, the Philadelphia City Council, the Philadelphia Port Authority, all zoning problems, labor, unions and such miscellaneous items as insurance and the Poconos.

However, the parts of this tape I want you to hear relate to Mr. Myers' complaint that he ended up with only $15,000 of the money that had been promised to him. I would appreciate the committee turning to Tab 4. That is Exhibit No. 7A.

Mr. CACHERIS. May I make an observation?

The committee made this point last time I appeared here, that the tape he is about to play was ruled by the judge not to be an act of conspiracy and it was taken away from the jury on that basis. You notice what Mr. Prettyman has said to you, that these matters were strictly local, not involving the congressional office of this Congressman.

Mr. PRETTYMAN. Mr. Chairman, the court allowed the jury to see and read the tape of January 24 for the specific purpose of helping the jury to determine Mr. Myers' state of mind on August 22. Those were his instructions. Therefore, I think they were equally relevant to this committee as to what Mr. Myers' state of mind was.

Tab 4.

[Videotape 4 was shown.]

Mr. PRETTYMAN. If the committee would now turn to Tab 5, please.

[Videotape 5 was shown.]

Mr. PRETTYMAN. If the committee would now turn, please, to Tab 6.

[Videotape 6 was shown.]

Mr. PRETTYMAN. If the committee would now please turn to a brief section on Tab 7.

[Videotape 7 was shown.]

Mr. PRETTYMAN. And on Tab 8, a brief section.

[Videotape 8 was shown.]

Mr. PRETTYMAN. Finally, if the committee would please turn to Tab 9.

This, incidentally, is a different meeting of January 25, the next day between Mr. Myers, Mr. Wald, Mr. Haridopolos, that occurred the day after the meeting that you have just been listening to.

[Videotape 9 was shown.]

Mr. PRETTYMAN. In regard to this money problem, I think the Congressman best put it to this committee when he said, "I got screwed out of what I was told I would get."

In two telephone conversations with Agent Cohen after that January 25 meeting that you have just heard a portion of, Congressman Myers once again raised the issue of the money that was due him and he was promised the full amount.

Finally, Mr. Wald testified that Mr. Haridopolos would be going to Mr. Myers' home on February 2nd to deliver $85,000 to him. That was $35,000 to make up for the money Mr. Myers had not received from the original $50,000 and another $50,000 in return for his additional promises made on January 24th.

As you know, Abscam broke in the press on February 2nd, and no additional money delivery was, in fact, made.

Mr. Chairman, that evidence along with all that the committee has reviewed to date is all that I believe is necessary, taken with Congressman Myers' own testimony before the committee, to present for purposes of this sanction hearing.

As I understand it, after Mr. Myers presents his testimony, I will be given an opportunity to sum up for the committee.

The CHAIRMAN. Yes.

You are through, then, temporarily?

Mr. PRETTYMAN. Yes, sir.

The CHAIRMAN. Mr. Myers and your counsel, do you have any presentation you would like to make with regard to the sanctions aspect?

Mr. CACHERIS. Yes. I would like to call two witnesses very briefly.

The first is Congressman Austin Murphy who is here and would like to address the committee. And with leave of the committee, I would like him to sit right here and make his statement.

Do you wish to swear him?

The CHAIRMAN. Yes, I do.

[Witness sworn.]

The CHAIRMAN You may proceed as you wish.

TESTIMONY OF HON. AUSTIN J. MURPHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. MURPHY. Thank you, Mr. Chairman.

I have, of course, as all Members of Congress in recent days heard of the proceedings here and have read considerable about it in the papers. This is the first time I have seen the direct evidence, of course.

The matters that we hear rumored on the floor, of course, the committee is going to take rather severe action, a possible expulsion of Mr. Myers.

As a lawyer and as a constitutional lawyer, I feel very strongly about the office of Congress and I believe that with the history that we have had in our country for 200 years, having only expelled Members for treason, and that although committees of Congress have at times recommended expulsion, exclusion, that treason alone has been punishable by expulsion.

I feel very strongly that in all of our individual districts the will of the electorate must supersede, must have precedence over our own personal feelings. And I must say that I developed some different feelings this morning, having watched the tapes twofold.

I do believe that what I saw and heard this morning, that as a Congressman I would want to see my colleague, Mr. Myers, disciplined, but I also feel strongly that safeguards that the people have in an elected Congress must be protected by this committee.

I might feel differently, I might feel stronger, let's say, if there had been anything except talk. The tapes appeared to me, besides being—I might say—disappointing as a colleague of Mr. Myers, they also seemed to indicate to me that he was trying to con someone and that all of his actions were talk. And as I understand the testimony, he has never committed an act in the Congress or an act to the City

Council or used his official office to do other than attempt to con the conners.

I think that that is some mitigating circumstance in his favor.

I also believe that this committee, if it disposes the Myers matter today—which we expect that it will—should not dismiss the matter entirely. I think this committee should look beyond why Mr. Myers and six or seven or ten or twenty other Members of Congress have been targeted for some scam, why are individual Members of an elected Congress chosen for special probes? Why are they invited in to participate in what otherwise would be an illegal operation?

It strikes me that what if a member of this committee votes for Mr. Myers or what if myself, a Congressman from Pennsylvania, speaks on his behalf? Do I now face an executive probe because I have had the courage to voice my opinion? Does the FBI now target me for some special action?

It is my understanding that in subsequent testimony a member of your committee was going to be targeted for a contact and that many other Members of Congress, for what reason—and I think these are the reasons that we as a Congress must look into.

I shudder to think what might happen—and to the reporters we have it may make an interesting final book—what might happen if someday a chief executive comes on the scene and says that, "I am tired of dealing with an elected Congress and I am going to get enough of them that I will be able to destroy that institution. I will bet a hundred of them indicted and they will all make moves against each other and I will dissolve that Congress and the people will agree with me."

He could use tremendous powers to do that. I don't know whether it could succeed, but it makes an interesting fiction.

I do believe from what I saw this morning that Mr. Myers should be disciplined. I didn't believe that before I walked in this room, but I also would encourage you, my colleagues, to consider that discipline as less than expulsion.

What would happen to we Members of the 96th Congress if we expel him and your later probes or the due process conduct of court proceedings points out that there were tremendous illegalities under our constitutional law committed by our Government, your and mine? Then what do we do in coming years as we retire from this body and think that we expelled a Member whose due process under our very Constitution was violated?

I, as one Member—although I think some of the statements were reprehensible—I, as one Member, don't want to carry that burden with me.

What if other Members who are undergoing trials now or will be are found not guilty? I realize that we, you and I, have the responsibility to weigh whether those Members should continue to serve in Congress or whether or not they should be disciplined or censured for the statements that they made or acts, if any acts are proven, but I think there are several reasons that I still go back to my very strong feeling that only the people in a given congressional district have the right to select who they want here to represent them.

What if things got so bad that we felt that only Christians should be represented or that only Republicans should be represented or that only Communists should be represented or only certain groups should be represented in Congress because we would be in the majority?

I think it is up to the people to decide. I think that the censure, the disciplinary action that you would take, you have to consider is the matter totally disposed of? It is not until all Members who are implicated are tried, it is not until the due process hearing is concluded.

What if in a new trial or in the due process hearing some missing tapes that I read about in the paper are found and there is greater complicity shown on behalf of government agents than what we know now?

What if there is a new trial? What if there is a reversal?

All of these things you and I will have to share the burden of in the coming years.

I did want to say—and it was my intention not to get into a dissertation—but merely to state that I have known Mr. Myers for approximately 10 years. I served 6 years of those 10 in the Pennsylvania Legislature, I in the Senate, Mr. Myers in the House. I got to know him. I served four years in Congress with him. I know him and his family. He sits next to me on one of our committees.

For what benefit it might be to my colleagues on the committee, I always found him during those 10 years to be honorable, to conduct himself in a proper manner in the Pennsylvania House and here in Congress until I heard a lot of diatribe and a lot of talk of him attempting to con someone on the tapes this morning. I would have not thought that possible.

I do hope that you, as my colleagues, will seriously consider that—it is my understanding only three of our Members have been expelled, and for treason. Barroom talk, boasting statements, even vulgar statements are not the carrying out of an act against our country or against this Congress.

I think for those boastful, bragging, vulgar conduct that my colleague should be disciplined by us, but I think we should also attempt to protect the very Constitution that said we should have an elected Congress and allow the electorate in the First District of Philadelphia to take out what they will on Mr. Myers because he is here to represent them.

Thank you. If you have any questions, Mr. Chairman, members, I would be very happy to answer them.

The CHAIRMAN. Any questions?

Mr. Sensenbrenner?

Mr. SENSENBRENNER. Congressman Murphy, you indicated in your statement that you believe that the ultimate judgment should be rendered by the voters of the First District of Pennsylvania.

Given the fact that the U.S. Court of Appeals for the Second Circuit has prohibited the news media from showing the tapes on TV that we have witnessed here today, how would the voters of that congressional district be able to reach a fair and unbiased judgment without having that information?

Mr. MURPHY. I would suppose that as a voter of that district I would have probably read, with greater interest, all of the newspaper stories on the trials and all of the statements it is my understanding were fully printed in the Philadelphia newspapers. Not in our Pittsburgh papers. I am from the western part of the state. We read excerpts or summaries. We were not benefitted by the day-to-day trial coverage. This is the first time I heard any actual trial testimony.

I would think the voters of that district, as the voters of your district, or the voters of mine, would know us, and knowing us would be extremely interested in reading the entire matter.

I would suppose that the Philadelphia—I see that. It is a considerable amount.

Mr. Sensenbrenner. One further question, Mr. Murphy.

You, yourself, have testified that your impression of Mr. Myers' activities substantially changed since you saw the videotapes here this morning. Since your impression of Mr. Myers' activities substantially changed after viewing the tapes, don't you think that the voters', in that congressional district, impression might change if they had an opportunity to view the videotapes on Philadelphia TV?

Mr. Murphy. I would suppose that if I had previously read the full coverage, as I understand—I saw one or two issues of the Philadelphia papers. I didn't have time to read them. I think that all of the matters that were there were certainly covered in those news accounts. I just didn't have time to read them.

I would hope that his electorate, who are responsible for his representation here, would have taken that opportunity.

Mr. Sensenbrenner. Thank you, Mr. Chairman.

The Chairman. Mr. Livingston?

Mr. Livingston. Mr. Murphy, I would like to commend you on your presentation. I thought you did exceptionally well, but I would like to question you on a couple of things you said.

You said after seeing the tapes, you have described Mr. Myers' conduct as being reprehensible. You saw all of the tapes, did you, this morning?

Mr. Murphy. I saw all that were shown here.

Mr. Livingston. Then, in effect, you saw the depiction of Mr. Myers' acceptance of a package and later his admission that he received $15,000 in cash; is that correct?

Mr. Murphy. That is correct.

Mr. Livingston. And you heard his requests for an additional $85,000 in cash; is that right?

Mr. Murphy. That is right.

Mr. Livingston. And you heard his claims that he was receiving that money in return for certain official acts, either in the Congress or out; is that correct?

Mr. Murphy. I heard him boast that he would—that he was so important he could do certain things. I do believe that the thing that has fallen short in the matter, in all of the matters, in all of our Members who have been so implicated, is there is apparently no evidence that anyone did anything except boast, and I must look beyond that.

What were they told before they entered the room? Were they told to pound their chests and lay it on the line as to how important they were and they could get a gratuity?

If that is what was done, then I think that we should discipline a Member, but that unless he used this office here on the Hill, that we should allow his electorate to determine whether or not they want him here.

Mr. Livingston. Mr. Murphy, on the basis of your presentation here, I would have to say that you have probably tried a number of cases in court, have you not?

Mr. Murphy. I have.

Mr. Livingston. And in the course of those trials, it has been pointed out that an overt act in completion of a conspiracy can be made not only by the performance of a defendant's portion of the contract but by acceptance of the gratuity, by acceptance of the money; isn't that a fact?

Mr. Murphy. That is correct.

Mr. Livingston. In this case Mr. Myers accepted the $15,000 and requested an additional $85,000?

Mr. Murphy. And I look at a crime against this Congress with some difference than I look at a crime that is on——commission of a crime on the statute books.

If the conviction is, let's say, upheld, if Mr. Myers would have come here and introduced legislation, and he would have contacted members of our delegation, as he boasted he could, to further those legislative aims, then I think I would feel stronger than I do.

Mr. Livingston. But you deny that he accepted the $15,000 or that he requested an additional 85?

Mr. Murphy. I can't deny that.

Mr. Livingston. Thank you very much.

The **Chairman.** Mr. Hamilton?

Mr. Hamilton. Mr. Murphy, I appreciate your statement this morning. I know it wasn't an easy task for you.

Mr. Murphy. No, it certainly wasn't

Mr. Hamilton. All the members of the committee, I think, appreciate that.

You state that you don't think we should expel Mr. Myers, but you do think we should discipline him. What kind of discipline action would be satisfactory, do you think?

Mr. Murphy. I believe that the same that was taken against Mr. Diggs. I was here in that time. I have only been here three years and nine months. I think that that discipline would perhaps be proper discipline.

Mr. Hamilton. Do you see some combination then of censure and perhaps a fine and reducing some privileges of the member?

Mr. Murphy. I am sure——

Mr. Hamilton. I want to get the direction.

Mr. Murphy. It would be difficult to say a fine. I think in the Diggs matter is was actual congressional funds that were involved. In this case it is government funds, unfortunately, involved.

I would say that our action here should be to place him in the well and under that embarrassment that I have seen two or three members in my time go through. That is, to me—I wouldn't want to face it.

I wouldn't even want to face a censure by my colleagues.

Mr. Hamilton. Thank you.

The **Chairman.** Other questions?

Mr. Stokes?

Mr. Stokes. Thank you, Mr. Chairman.

Mr. Murphy, I too want to associate myself with the remarks of others and commend you upon the presentation you made here this morning.

You raise in my mind the question regarding the constitutionality of what has taken place, particularly the due process aspect.

I guess this is what is to some degree disturbing to me. I understand, of course, that the due process hearing is still pending; that that hearing may well vitiate the action taken in the Court, overturn the conviction.

We all understand that at times the conduct of the government can be so outrageous as to require the court under due process to set aside a hearing—such a conviction, but here where no due process evidentiary material has been presented to our committee, we are in a very difficult position in terms of being able to speculate as to what may or may not have occurred with reference to the outrageousness of the government's action.

How do we, in the absence of some presentation on the question of due process, and how do we apply the due process aspect?

Mr. **Murphy**. Well, I think perhaps, Mr. Stokes, I was leading to that when I opened; that I hope your disposition of Mr. Myers or of any other individual implicated in this would not end this committee's desire in the service of a free Congress to inquire as to how certain members of this elected body are targeted for the invitation.

One part of the tape, I did hear this morning, Mr. Myers said, "I didn't walk in just off the street," or something like that.

He alluded to the fact that he had been invited there.

I read—a friend of mine—I served with one of the members of Philadelphia in the State House 20 years ago.

Some old colleagues of ours sent me Mr. Schwartz' testimony last week. In the Schwartz testimony, the Federal investigators on three or four separate occasions mentioned, "Can you get Myers and Leaderer in?"

So this is why I think that our committee owes it to our government and our system of government to inquire into the very nature of the investigation of the SCAM, as the Federal government has put it.

I think we should be as interested in preserving our constitutional form of government as we are in disciplining members who would violate our code of conduct, and I am too interested in that.

I commend this committee. I wouldn't want to serve in your shoes, believe me. But I also believe that you have the additional responsibility to go back into it.

I have heard rumors—and I haven't read it—but that a member of your committee was going to be invited in and that a colleague in his state was going to be invited in; that a colleague of the Chairman's from his state delegation was going to be invited in.

Why? Why or what were they being tested for?

I think this is just as important as disciplining a member who has a boastful or vulgar attitude in a barroom, a public place, or a private meeting.

Mr. **Thompson**. Mr. Chairman?

The **Chairman**. I would like to observe that the probabilities are this committee would not have jurisdiction.

It would be the Judiciary Committee that would have jurisdiction. We do not have oversight over the Judicial Department.

I will discuss that with my colleagues on that committee. They feel that our charter does not include that, and I think that is on solid ground. Their charter does include that.

The Judiciary Committee could do that.

Anybody else? Mr. Thomas?

Mr. **Thomas**. Mr. Murphy, you indicated that a gratuity was accepted and there was no overt acts committed and that it was a crime against Congress.

Mr. **Murphy**. No. I said—I didn't say no overt acts were committed. I indicated that no official act was taken. I think there is where I draw a thin line of distinction.

Mr. **Thomas**. As an admitted non-attorney—and it has been established as a member of this panel in earlier cases that I am an admitted non-attorney—that thin line that you just drew in my opinion becomes completely obliterated when the two of us sit here and ask what it is that we have in common that the people out there don't.

Ultimately the only thing we have in common is the fact that the people put their trust in us; that they have elected us to a position of responsibility; that we are members of Congress, and that you talked about upholding the Constitution, to stress the constitutionality.

Article I, Section 2, says that we are elected by the people of the several states. It also says in Article I, Section 5, that the members of the House can discipline their own members.

You indicated possible threats and scenarios to representative government. In my opinion, Mr. Murphy, the greatest threat to representative government is the destruction of the bond, the destruction of the trust that makes representative government work. That trust between the elected member and the electorate. That is the greatest threat to representative government. Any time, in any of those proceedings, Mr. Myers could have said no.

Mr. **Preyer**. Mr. Chairman?

The **Chairman**. Mr. Preyer?

Mr. **Preyer**. Very briefly.

I, too, want to commend you, Mr. Murphy, for the effectiveness of your testimony and for your courage in offering it.

On the question of sanctions, the comparison with the Diggs case has been brought up. Wouldn't you agree that the Diggs case, in terms of criminal law, was more analogous to embezzlement while this case is more analogous to bribery?

That is, in the Diggs case he was not charged with, in effect, selling his vote. He was charged with a serious offense, extorting money from his employees; but that was not an offense at the level of selling one's vote, and that, therefore, wouldn't you say that this was a more serious offense than the Diggs case?

Mr. **Murphy**. I would think, Mr. Preyer, that if Mr. Myers had carried out any of his boasts, I would fully agree with you, but I think that it lacked the final element in the commission of a violation of his office by the fact that he was just boasting or bragging, telling how influential he was and never doing anything about it.

Mr. **Preyer**. And, of course, it doesn't meet your argument that the only grounds for expelling a member traditionally has been treason and you contend that that should remain the grounds, a crime against the country?

Mr. **Murphy**. Yes. I think a crime against the country, of course, is the ultimate, in my opinion, especially of a member of our government.

The **Chairman**. Mr. Fowler?

Mr. **Fowler**. Mr. Murphy, let me join my colleagues in commending you. Not to be repetitious, but because we genuinely feel it. I don't know anybody who serves on this committee that wouldn't rather be in other places. It is difficult.

We do it because we were asked and felt like somebody had to do it, but far more difficult for you to come in voluntarily.

These proceedings were made doubly difficult not only because of the human factor, but because of the fact that the lawyers are acting like lawyers and trying to preserve every constitutional privilege for Mr. Myers that he is entitled to.

About half of us up here are lawyers and the other half are not lawyers. We lapse into these arguments of legality and due process which are certainly appropriate because, again, we are trying to stick to the letter of the constitutional law, but, as you recognize, and also Mr. Myers, we are not a court; and, as you heard this morning, we made the decision to—in order to really bend over backwards in fairness to Mr. Myers, that we allow the court proceedings go first rather than do our own investigation, call up evidence that might jeopardize him.

Having said that, there is one—and listening very carefully to the defense this morning—and having heard Mr. Myers testify on behalf of himself the other day, the defense continues to be that in some part, in a large part in your testimony this morning, is the fact that there had not—nothing had—nothing was fulfilled; nothing was done after what you termed to be the boasting.

The other part of the law, not the criminal law, but the contract law, is what doesn't seem to want to go away from this case.

We are just talking to you as one lawyer to another now. In contract law it takes nothing but three elements, I think you will agree: That is, offer, acceptance, and consideration. Whether or not that contract is ever fulfilled is irrelevant to the making of the contract.

That is the difficulty, the real difficulty of many of us here, I would say, quite apart from the—what we have seen on the tapes; that Mr. Myers came before us on his own volition and admitted to accepting the consideration, admitted to his acceptance of what was being offered and that we have before us an offer, an acceptance and a consideration, the making of a contract, which—whether it was fulfilled or not—seems to hold no relevance.

This started out to be a question. I am just musing out loud for you the difficulties of this choice.

Anything you have to say with that analogy, I would be happy to hear.

Mr. **Murphy**. Thank you. I think I was doing the same to you, so you are allowed to do the same for me, go off on a dissertation.

I think you are perhaps right that in contract, that would form a contract. However, I would say that that is why I feel, seeing the tapes this morning, that Mr. Myers should not escape discipline, but that I think I address my entire remarks to expulsion, and that the conspiracy, as one of the members mentioned, and your contract of conspiracy that you have just outlined, if the court ultimately finds Mr. Myers guilty, the question we still have to ask ourselves is that does that violation warrant us denying the people of the First District of Philadelphia their seat in the Congress?

Short of the fact that he didn't use the office to perform any act that would—use the official act; I think this is where I—I guess I draw a very thin line.

I do believe that the facts you have laid out require us to discipline him, absolutely require us to.

Mr. **Fowler**. If the evidence shows that Mr. Myers voluntarily entered into a contract to use his office to—on behalf of these people, if he voluntarily entered into a contract in which he promised his vote in advance, what should the sanction be, in your opinion, as a member of Congress?

Mr. **Murphy**. I would think he should be fully censured in the well of the House for what has happened. If he would have delivered that vote, if he would have urged others of us to join in that conspiracy, then I think he would have carried out a greater act against the Congress.

The **Chairman**. Any other questions or comments, things relating to this witness?

We do now have to go.

Mr. **Thomas**. Very briefly.

Mr. Murphy, I do want to thank you because you have been a sounding board for us. We have these deliberations among ourselves. It did take an act of courage for you to come down as a sounding board.

Based upon the tapes that you just saw, you reiterated that the people of the First District of Pennsylvania have to be heard. Would you say it is a fair statement that, based upon the tapes that we saw, that the people of the First District of Pennsylvania don't necessarily own Mr. Myers' vote? It is the highest bidder.

The **Chairman**. Do you want to answer that question?

Mr. **Murphy**. No.

The **Chairman**. Anybody have anything further to ask Mr. Murphy?

If you don't, we will come back with the next witness.

Then we won't have Mr. Murphy come back. You have another witness.

We will recess until we cast this vote.

[Recess taken.]

The **Chairman**. The committee will come to order.

I believe there is another witness that you have?

Mr. **Cacheris**. Yes, sir.

Mr. Chairman, Mr. Myers would like to make a statement.

Again, committee council has been advised of our presentation. I assume the committee is aware of that.

The **Chairman**. Of what?

Mr. **Cacheris**. Of what we intended to present today.

The **Chairman**. Well, you can proceed as you desire regardless of whether I know what you are going to do or not.

I don't know that I know what you are going to do.

Mr. **Cacheris**. What I am saying to you, sir, is I have advised committee counsel how we are going to proceed.

I merely assume the committee would be aware of the advice I gave the committee council.

The **Chairmman**. We are at least legally advised. Go ahead.

Mr. **Myers**. Thank you, Mr. Chairman.

Mr. Chairman, I think the—what you say today on tape certainly I don't deny that, never did, never intended to.

I told the jury the same thing. The problem with this case is what you don't see off the tape.

Before I go to the meeting on August 22d, I think Mr. Prettyman mentioned that my name first came up sometime around July 29th when my name was first mentioned by Mayor Errichetti.

Mayor Errichetti mentions my name without me even knowing about Mayor Errichetti mentioning my name.

I didn't talk to Mayor Errichetti about this matter until the day that we went to New York on August 22. So the hooks were out there long before I even talked to Mr. Errichetti about going up to New York and meeting with the representatives, or the sheik whom I was supposed to meet.

I first was told about the bogus sheik by councilman Lewis Johanson who had met on this boat that was mentioned down in Florida. Of course, that conversation was not taped.

The FBI had the facilities there to tape, but for whatever reason, they didn't record those conversations.

Mr. Johanson represented a gentleman in Atlantic City who was trying to sell a hotel, and Mr. Johanson was told that the Arabs were interested in buying this hotel, a legitimate transaction in Atlantic City.

He went down to Florida on the boat, and when he went down there, he took with him a feasibility study; he took with him the architectural plans; he took with him an agreement for sale, and the whole proposal about this hotel complex.

Now, what the government done was lead Mr. Johanson that they were interested in this deal, this was exactly how they wanted to spend this money in America.

He thought this, of course, was the biggest opportunity in his lifetime. His law firm, him and his partner, stood to make a 2.5 million dollar commission on this transaction. He explained to me that he would retire and this would be his retirement nest, this commission that his firm stood to make.

So all of this is not on tape. What Mr. Johanson went down to meet with these Arabs, in a legitimate deal.

After they get him all keyed up and all thrilled about this great opportunity for him and his firm, then they say they want to meet some important people. That is how I come into the act. Okay?

Mr. Johanson, who is a very close friend of mine, a political ally in the city, who has recently helped me in elections, came to me and told me how important this deal was to him.

So, when I agreed to meet with the Arabs, I did it for basically——

The **Chairman**. Before you go any further, so far what you have said is introductory. You were sworn once in this case. You haven't been sworn again today. In order to make it according to Hoyle, I think at this point I should swear you.

[Witness sworn.]

TESTIMONY OF HON. MICHAEL J. MYERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

The **Chairman.** What you have said this afternoon, all of that is the truth too?

Mr. **Myers.** Absolutely.

When Mr. Johanson tells me about this legitimate deal in Atlantic City, tells me about the commission he is going to make and tells me that the rich Arabs were willing to pay his law firm a hundred thousand dollars if he would introduce him to some important people, so at that point in time it sounded to me like a fairy tale. I couldn't believe someone would pay that kind of money to meet an important person. I told Lou that.

I said, Lou, are you sure about this group? Are they for real?

He said, well, I will tell you what we done. We checked their financial status out in Chase Manhattan Bank up in New York. We were told Abdul Enterprises, that was their trading name, had $400 million on deposit in Chase Manhattan Bank, in that one bank.

He said they were told that by one of the bank executives. That information later came out in my trial and one of the FBI agents told the court that he had instructed the bank to give out that false information to anyone checking into Abdul Enterprises.

At that point in time, when Lou tells me this, Lou is an honorable man who I certainly believed. I figured this is true.

Now, besides the hotel deal in Atlantic City, they want to invest millions of dollars in my district, within my city. So I agree to go to the meeting to meet with the Arab, the sheik himself I am supposed to meet, who also, I was told, did not speak English.

I was told that Lou was going to land this big hotel deal. My district was going to be the benefactor of millions of dollars worth of investment. His law firm could pick up a hundred thousand fee for introducing me, as an important person.

I said, what do I have to do, Lou?

He said, you don't have to do anything, absolutely nothing, and you will probably never see these people again.

So I said to him, if that is the case, I would be happy to meet.

So he said, all right, give me further instructions later on when and where we were to meet.

The day before we met, Mr. Johnson came to my home in Longport, summer home, that is, where he also has a summer home, two blocks away from me, and told me that Mayor Errichetti, the Mayor of Camden, and him and I were to go up to New York the next day and meet the sheik. He was going to be in town.

So I said, well, what do I say or what do I do?

He said, well, prior to the meeting you are going to meet with one of the sheik's representatives, a Mr. Weinberg, Mel Weinberg, and you will meet with Errichetti. They will go over basically what you should say to the sheik and they will tell you what he wants to hear.

When I went to the meeting up there, I met with Mr. Errichetti. At that point I was told that Mr. Weinberg couldn't—he was unable to attend. I went up two hours early prior to meeting the sheik to get instructions on what to say to the sheik to impress him.

Now, I was told that the sheik likes tough guys; you got to talk tough; you got to act like you control everything, and come on strong. That was my basic script.

You come on strong, to play act, and I would be impressing the sheik and he would be willing to invest in the district; he would buy the hotel in Atlantic City, and give a hundred thousand dollars to the law firm.

I went in there, and if you look at the transcripts of the 22nd of August meeting, they don't even say anything to me.

As instructed, I walk in the door and start right out with about a four, five minute explanation of how strong I am.

Now would anybody go into a meeting and start off like that? They didnt even ask the question yet. That was my instructions.

I start right off with strictly B.S. I talk in the very first statement I give that we have a member—I am so powerful; I control the delegation. I never even talked to the delegation about this.

Errichetti goes on to say there's six men in the delegation. There's four men in the delegation, not six. I go on to say we have representation on the Judiciary Committee. We don't have any representation on the Judiciary Committee. I never spoke to anybody on that committee.

I never had anything to do with any bills dealing with any matters on immigration other than one that I introduced which, if you want me to explain, I would be happy to.

But, as far as me going to the chairman of that committee or going to anybody throughout this whole six or eight month period of time that lapsed in between, actually about six months, I never made one phone call to anyone, never spoke to anybody, any member; never spoke to any committee, never asked any of my staff to do any research on legislation on how I should do it, if I was going to do it.

I never did anything because I was told I didn't have to do it, that I would—the sheik, if he ever had to leave—this is another thing Weinberg told Mayor Errichetti to tell me: If the sheik for political reasons had to leave his homeland, that arrangements had already been made that he would go to South America and the possibility of him coming here didn't even exist.

I was told that prior to going into that meeting.

Now, during the six-month period of time, no one asked me anything. It turns out to be the FBI and, of course, the Justice Department. They never asked me about would I send a letter to the State Department, would I give them some research or have my staff meet with somebody to go over a bill.

Nothing like that. They never asked that because they—the reason I say they didn't is because they are the ones that instructed people to tell me I never had to do anything.

That is the reason I went there.

It all boils down to what did I do? I didn't do anything. I was told I didn't have to do anything. I never had intentions of doing anything.

As far as those tapes, that is strictly B.S.; that is strictly play-acting. I was playing out a part that I was instructed to do, indirectly, through the people that brought me there.

The **Chairman**. Why do you think they gave you all the money?

Mr. **Myers**. I thought it was a fairy tale at first.

The **Chairman**. You know fairy tales don't exist. Why do you think they did?

Mr. **Myers**. It was explained to me that the sheik, the Arab businessmen do business a little differently than Americans.

The **Chairman**. You believed there was a sheik. When did you think there was not a sheik?

Mr. **Myers**. I thought there was a sheik all the time up until the story broke. I believed that there was a sheik. Of course, I never knew his name and never met him, but I believe there was a sheik. I was even told when I met the sheik that day, to tell him anything you want. I was told this by Mayor Errichetti.

The **Chairman**. You never met the sheik, did you?

Mr. **Myers**. No, but I was supposed to meet him that day. When I went into the meeting, he was tied up on other business. I was going to meet the sheik's representatives.

I was told at that point to tell the sheik whatever I wanted to. He doesn't understand English; he doesn't speak English. I said: What should I say?

Talk about anything. Talk about the Phillies, whatever you want to talk about.

This was such play-acting as far as I was concerned it just was—it was really too much to believe that it could be true, but I was gullible enough to believe it.

What convinced me that it was true was when Lou Johanson told me about the $400 million he was told by the bank executives at Chase Manhattan that Abdul Enterprises had.

Of course, the front that they put on convinced me again. They were flying to Florida. Had their own planes flying all over, limousines. They certainly acted like they had tons of money. That led me to believe that.

You also notice in the tape that we showed this morning Mr. Errichetti says to Anthony Amoroso, he said, let's go buddy. I don't know whether you picked that up. It is in the transcript, page 29. He is telling them, let's go, you heard enough, give us the money.

You see, Errichetti told me Weinberg and, of course, Amoroso were part of the deal. They were in on it. That is the reason after I left the room with the package I handed it over to Errichetti who was going back to give them their share.

That was a part of the whole operation, but they wanted the money funneled through the law firm.

Whatever I said to these people didn't make a difference what I said to them. They were part of it. They were the same as me and the same as Mayor Errichetti and, of course, Johanson and Criden.

So I went on. They brought up about State Department. No problem. I got all kinds of connections there. I never called anybody in the State Department. I don't know anybody in the State Department.

Then as we go into the Philadelphia tapes, I solved whatever they said. I, of course, could handle it. If it was a matter with the Mafia, anything at all they brought up, it was no problem.

Of course, I am sure you noticed in the three tapes that on the second tape, that was the tape of the January 24th, that I was intoxicated there. My appearance and my attitude was not only embarrassing to me, I think it was disgraceful. You know, I am very sorry for that. It is on there. I certainly don't deny that that is me there.

The bottom line is I didn't do anything wrong. I never intended to do anything wrong. Of course, I didn't do anything wrong as far as doing anything to sell my office.

Certainly I am embarrassed at what I did. I certainly didn't act in any ethical way. My attitude on—displayed in these tapes are disgraceful. I am ashamed of them.

The CHAIRMAN. You don't think there is anything wrong with taking money for something you didn't intend to do?

Mr. MYERS. I never intended to do anything wrong.

The CHAIRMAN. Don't you think there is something wrong with taking money from somebody?

Mr. MYERS. No. Not when I was told——

The CHAIRMAN. You don't think it is wrong to take money from somebody when you promised to do something for them?

Mr. MYERS. I was never told I had to do anything. I was never told I had to do anything.

The CHAIRMAN. The money was not coming from that person, was it?

Mr. MYERS. The money was coming from his representatives.

The CHAIRMAN. From the sheik?

Mr. MYERS. From the sheik's representatives, certainly. The sheik was the man delivering the money. The sheik was the gentleman who was buying the hotels and investing the money in my district.

The CHAIRMAN. You were getting money from the sheik and telling the sheik you would do something for him and you never intended to do it?

Mr. MYERS. And I was told that I didn't have to do it by them.

The CHAIRMAN. But not by the sheik?

Mr. MYERS. Not by the sheik. I never met the sheik.

The CHAIRMAN. Wasn't the sheik getting ripped off to the extent of 15,000?

Mr. MYERS. Yes.

The CHAIRMAN. Isn't that wrong?

Mr. MYERS. He was being ripped off.

The CHAIRMAN. Isn't that wrong?

Mr. MYERS. Let me say this to you. I don't say it is right, but I say it is not criminal.

The CHAIRMAN. Oh.

Mr. MYERS. I say it is not criminal. I am not happy I didn't take the 15,000.

The CHAIRMAN. There are a lot of people who qualify as noncriminal lawyers.

Mr. Cheney?

Mr. CHENEY. I wonder, Congressman Myers, you said repeatedly you didn't do anything for the money. Did you ever introduce anybody else to the representatives of the sheik?

Mr. Myers. Yes.

Mr. Cheney. In your mind was that some kind of overt action that you did in return for the money they provided to you?

Mr. Myers. No. No.

Let me say this to you: If you play all the tapes, you will see that. The gentleman that you introduced to the representatives, Mr. Musto, of course, during—he didn't take any money for anything like that. But when I was offered money to introduce Mr. Musto to the sheik, I told him that was not necessary, I didn't want any money.

I also say on that film, on that tape, that in my opinion they should give him a campaign contribution of $10,000. And how I derived the figure 10,000 was he was running in a special election and two weeks later running in a primary. I told them you can—of course, they had all these leases supposedly up in his district. I said, you could certainly contact your sources up there and give him a campaign contribution.

Mr. Cheney. You did, in fact, bring him in and introduce him?

Mr. Myers. I brought him in at their urging. I didn't go seek him out and bring him in. They urged me, tortured me night and day to get this guy in.

Mr. Cheney. No further questions.

The Chairman. Mr. Livingston?

Mr. Livingston. Mr. Myers, first of all, I want to say in our mutual relationship in Congress we have always been friendly. I regret our paths have crossed in this incident.

You have said that you didn't do anything wrong. I think your words were, I didn't do anything wrong, I didn't mean to do anything wrong.

The fact of the matter is that a jury of your peers has found in their opinion that you did violate the law, that you did do something wrong, whether or not you intended to do something wrong, and I don't think you are denying the transcript of the tapes that depict you saying that you could introduce a private bill in return for the money. And I don't think you deny that in fact you got $15,000 or that you requested an additional $85,000; is that correct?

Mr. Myers. That is correct, basically. But when you get into the 85,000, okay, they offered the 35. I don't ask for that. When they offer it, I don't say I don't want it. I just don't answer. They bring it up.

Mr. Livingston. We are quarreling about figures. I don't mean to get into a dispute about the figures. The point is you accepted some money and requested or they offered additional money and one of the things in the tapes showed that you had promised to introduce a bill, private bill, certain legislation on their behalf; is that correct?

Mr. Myers. Yes, that is correct.

Mr. Livingston. Suppose these Arabs or these people who you dealt with had taken a different tack. Suppose they had asked you: Mr. Myers, we have got one hundred thousand dollars in an envelope for you and we want you to kill somebody. What would your response, then, have been?

Mr. Myers. I would say you are talking to the wrong person.

Mr. Livingston. Why?

Mr. Myers. Because I wouldn't even consider any action like that.

Mr. **Livingston.** It is wrong, right?

Mr. **Myers.** That would be wrong, yes.

Mr. **Livingston.** Why is that wrong and this is not?

Mr. **Myers.** Because I was instructed that I didn't have to do anything. If someone came to me and said, Mr. Myers, here is a hundred thousand dollars, go over there and tell that guy you are going to kill him or punch him in the mouth or whatever, but I don't want you to really do it, just take the money and leave—and it was established by the FBI in that trial—and they made it very clear—that they had the—this playacting was set up and they lured certain statements out of the people that went before that camera just to show to a future jury.

That is the problem with this. I was told I had to do nothing. I never did anything. I never had any intentions of doing anything. That is the problem with this case.

Mr. **Livingston.** In the hypothetical situation I have just put to you, why couldn't you simply tell the persons that you were dealing with, sure, I would go kill him. Give me the hundred thousand dollars and I will leave.

Mr. **Myers.** I certainly could have.

Mr. **Livingston.** Would you have done it?

Mr. **Myers.** Would I have told them no?

Mr. **Livingston.** What would you have done?

Mr. **Myers.** If they were serious, I would have moved quickly away from them as rapidly as possible.

Mr. **Livingston.** Would you have taken the money?

Mr. **Myers.** If they were serious? Absolutely not.

Mr. **Livingston.** How would you know whether they were serious?

Mr. **Myers.** If they came to me and said that to me, I would think they were serious. If they come to me and use a close friend and associate who tells me this is playacting, I would say it is playacting. Nothing can happen here.

Mr. **Livingston.** Would you have taken the money?

Mr. **Myers.** Then I would have taken the money, yes. That is the grounds I took the money, yes. Under the playacting scheme. I didn't take the money under the grounds to do something. I was told from day one I never had to do anything. That is the whole problem here. That is the problem with this case.

Mr. **Livingston.** Thank you.

The **Chairman.** Mr. Fowler?

Mr. **Fowler.** Mr. Myers, go through one other thing that I think I had not understood from your testimony the other day, and I may just have missed it or you may not have covered it.

Just to refresh our recollections, who was in the room with you in the August 22nd meeting?

Mr. **Myers.** The Mayor of Camden, New Jersey, Angelo Errichetti; Anthony Amoroso, a special agent; and the paid informant, Mel Weinberg, the FBI informant, Mel Weinberg.

Mr. **Fowler.** I think when you made your statement a moment ago, you said that you were convinced that all of these people were in this thing together, going to be part of the deal that defrauded the sheik. Is that what you said?

Mr. Myers. Yes. Yes. That is what I said.

Mr. Fowler. Who are you talking about?

Mr. Myers. I am talking about Mel Weinberg, Anthony Amoroso, who I was told—I was supposed to meet with Mel Weinberg, okay, prior to going into this meeting, to get my instructions on what to say to the sheik.

Now the sheik, of course, at the last minute, he couldn't be there. He was tied up at another meeting somewhere.

Mr. Fowler. Let me just pursue this. What you are saying is that you were told by Errichetti or Johanson?

Mr. Myers. By both.

Mr. Fowler. You were told by Errichetti and Johanson that Amoroso and Weinberg, who were posing as the agents for the sheik——

Mr. Myers. Yes.

Mr. Fowler (continuing). Were actually part of some sort of deal. I am not going to use any legal words. Some sort of deal that you were also going to play a part in to defraud the sheik, is that correct?

Mr. Myers. That is correct.

Mr. Fowler. If that is the case, as a United States Congressman, is that not a crime?

Mr. Myers. Well, the way I view it is that these representatives who were trying to take advantage of their employer and willing to pay a fee back to the law firm of Criden, Johanson, who had agreed to give me something, I looked upon it as a way to pick up some easy money for myself and also to help my friend Johanson who had helped me in the past to land this big deal in Atlantic City, this hotel deal.

And also I was told about these hundreds of millions of dollars worth of investment in my district, and I was told that they were a part of ripping their own employer off.

Yes, that is absolutely right; that is why I am saying to this committee that I never sold my office to anyone and never intended to. That is the whole point.

Mr. Fowler. Let's leave that aside for a moment.

Again, that is what we have the unpleasant duty, as you understand it, of having to decide.

Mr. Myers. I can appreciate that.

Mr. Fowler. What you have just told us is that you knew because Johanson and Errichetti told you that you were entering into a deal with Amoroso and Weinberg and possibly others to defraud a third party called "the sheik?"

Mr. Myers. I didn't look upon it as I was defrauding him. What they told there was I didn't know. I never spoke to him. I was getting second-hand information off of other people.

They told us and told—of course, it was not told directly to me by Amoroso or Weinberg, but it was told through Errichetti and Johanson.

Mr. Fowler. But you believed them?

Mr. Myers. Yes, I believed it.

Mr. Fowler. You did your part? You did what you were told?

Mr. Myers. I did what I was told.

Mr. Fowler. And you accepted money for doing what you were told?

Mr. **Myers**. Yes, for play acting. I was told to play act. I play acted on film, supposedly for the sheik who, of course, couldn't make it.

The **Chairman**. You knew it was on film?

Mr. **Myers**. No, I didn't know it was on film.

Mr. **Thomas**. Mr. Chairman?

The **Chairman**. I don't believe you can finish with this. Go ahead and ask. When the next bell rings, I am going to leave. We are going to recess.

Would you rather break now? I think it would be better if we broke now.

I think we ought to come back at 1:30.

Without objection, we will do so.

[Whereupon, at 12:15 p.m., the committee was recessed, to reconvene at 1:30 p.m., the same day.]

AFTERNOON SESSION

The **Chairman**. The committee will come back in session.

We were hearing from Mr. Myers.

Mr. **Myers**. Thank you, Mr. Chairman.

Mr. Chairman, I think prior to calling the recess I was asked a question did I enter into an agreement with the other gentleman involved to defraud the sheik. I answered that I didn't look upon it that way and I did not enter into that kind of agreement.

The agreement I entered into was to meet the sheik who had offered to pay $100,000 to the law firm of Criden and Johanson for meeting an important person.

In no way do I see myself looking to defraud a sheik. He offered the hundred thousand. I didn't ask for it. I just wanted to clear up that point.

I think Mr. Fowler asked that question.

Beyond that, you know, I feel that I have told you so far about sums up my story. I didn't do anything wrong. I never intended to do anything wrong, and I was told time and time again that I did not have to sell out my office, which I did not do.

What I saw on those tapes, certainly I am not proud of them. I feel very bad that I had to put this committee to this task of even holding this hearing today. Certainly I am sorry for that.

As far as my colleagues on the floor, I certainly owe them an apology also.

I feel very bad about what I had done as far as being unethical, but as far as being criminal, I did not sell my office out and I never intended to sell it out.

I was clearly instructed that I did not have to do that.

I was more concerned in helping a friend land a hundred million dollar hotel casino deal and getting some of this Arab money spent in my district, in a hard core area, which my district happens to be, with high unemployment and all the other problems of a major city.

As far as this body making a recommendation on some kind of sanction, I certainly feel that you should make a recommendation to the full body, but I don't think it should be expulsion.

I hope the rumors that I hear—and I have heard this for a couple of weeks. I put rumors aside. I don't have any evidence of this. I hope the rumors that I hear that the committee has already made up its mind to recommend expulsion to the full body——

The CHAIRMAN. I want to reassure you on that. The committee has not met secretly, publicly, or in any way discussed at any time what penalties should be imposed.

We have had no discussion of that nature. I think I would remember them if there are. I preside all the time. Nobody presides in my absence. I have no recollection of anybody ever suggesting one thing or the other.

Mr. MYERS. Okay. I mean I am very happy to hear that.

The CHAIRMAN. We may well have to do that.

Mr. MYERS. That is understandable.

I am happy to hear there hasn't already been a conclusion reached here. I appreciate the members listening to what I have to say.

Like I said, I feel as far as my behavior on that film, certainly it was unethical; certainly this committee has a right, and I think should move to recommend some sort of sanction to the full body.

I have no objections with that. I just do not think that it should be a recommendation of expulsion because I did not sell out my office.

I want to make that very clear. The only reason I brought that rumor up, because that is what I heard. I even heard the vote was going to be eleven to nothing. If these are rumors—I only hope they are. I believe the Chairman. I know him to be an honorable man.

I am telling you what the word is around this Hill. Whether that is true or false, of course, that remains to be seen.

The CHAIRMAN. There would be nothing wrong if we did do that. We didn't do it.

Mr. THOMAS. Mr. Chairman?

The CHAIRMAN. Mr. Thomas.

Mr. THOMAS. Mr. Myers, you are privileged to be one of 435 persons in the United States of America to belong to the House of Representatives, the Congress of the United States Government. What does being a congressman mean to you?

Mr. MYERS. What does it mean to me?

Mr. THOMAS. Yes.

Mr. MYERS. Certainly it is a great honor to be a congressman. I am privileged the people in the First Congressional District sent me here. I am here to try to help my district in any way that I can.

Mr. THOMAS. What do you think the attitude in general of the people of the First District in Pennsylvania would be if they were privileged to view these tapes?

Mr. MYERS. Well, they already had an opportunity to read the full transcript.

Mr. THOMAS. View the tapes.

Mr. MYERS. What do I think it would be? It remains to be seen. If you look at the whole entire tape, and you have an opportunity to have it explained to you, you can see the way I was set up.

You could take—one reporter suggested I could take parts of those tapes and put them into an ad for re-election purposes when I am talking about developing the port and talking about building hotel complexes in my district, and talking about mortgage companies to help provide mortgage dollars in my area.

It is depending upon how you look at them.

If you look at them in their full context and look at the other evidence, as far as what was said off tape, and you put this whole picture into context, I feel that the people in my district would say that I was set up.

Mr. THOMAS. Do you have any reason to speculate on why the jury found you guilty on three counts?

Mr. MYERS. Yes. I have some thoughts on that. One was that the Judge instructed the jury that questions on due process were not questions for them and he wouldn't allow any of that kind of evidence to be presented.

So I think that they looked just at what they saw on film and it is very difficult to argue against a film.

There is no question about that.

I think the mood of the country, as an elected official, certainly it takes a package. He is guilty no matter what was in the package.

That is the mood of the people. There is no question about that.

Mr. THOMAS. I would suggest the mood of the people is more reflected in a feeling that the stereotype of the Member of Congress is someone who does not have a high regard for his office and that, as a routine matter, Members of Congress are bought and sold, and I am wondering if taken as a whole either the trial transcript or the tapes, taken as a whole, would it tend to reinforce that stereotype or tend to change it to the positive?

Mr. MYERS. Well, I really couldn't answer that.

If you ever check the coverage that this case has received so far in the Philadelphia press, you could fill this room up probably three or four times.

My constituents are certainly aware of the facts. There is no question about that.

Mr. THOMAS. That is all, Mr. Chairman.

The CHAIRMAN. Any further questions?

Mr. Stokes?

Mr. STOKES. Thank you, Mr. Chairman.

On this same line of inquiry, Mr. Myers, your trial was subsequent to your primary, was it not?

Mr. MYERS. Yes.

Mr. STOKES. You just stated that the publicity received in Philadelphia regarding these charges would fill this room up with——

Mr. MYERS. Several times; with coverage.

Mr. STOKES. With coverage?

Mr. MYERS. Yes, sir.

Mr. STOKES. What percentage vote did you receive in the primary?

Mr. MYERS. Well, I received a percentage of 42 percent, I believe, in the primary, in a field of 21 candidates.

The story broke on a Saturday night, which was February 2, and it happened to be in Pennsylvania, the filing deadline was the following Wednesday, that Wednesday.

In a period of time, around 17 additional candidates joined the race on the breaking of the story. Of course, we had some people that got 600 votes, somebody got 800. Another got 1,200. I got 25,000 votes in the primary, after the story broke.

Mr. STOKES. 42 percent would represent 25,000 votes?

Mr. MYERS. Yes.

Mr. STOKES. If I understand you correctly, what you have said to the committee is that your conduct, which in your opinion was not tantamount to the commission of a crime, was unethical?

Mr. MYERS. Yes, sir.

Mr. STOKES. As a consequence of your unethical conduct, you too believe that the House ought to take some form of disciplinary action against you?

Mr. MYERS. Yes, I do.

Mr. STOKES. But that the disciplinary action should be short of expulsion?

Mr. MYERS. That is exactly my position; yes.

Mr. STOKES. May I ask a couple of questions of counsel, Mr. Cacheris?

The **CHAIRMAN.** Surely.

Mr. STOKES. Thank you.

In the course of the trial, Mr. Cacheris, was the plea of entrapment ever entered on behalf of Mr. Myers?

Mr. CACHERIS. Not as such, Mr. Stokes. That plea was not entered. There were overtones of it, but the actual specific defense of entrapment was not raised. We have raised the due process overreaching argument which the Judge felt was not a question for the jury, but a question for the court.

Mr. STOKES. Can you, for purposes of the committee, elaborate in any respect in terms of the due process argument before the court?

Mr. CACHERIS. Yes, I can, in very general terms, because the hearing has not been held. May I say to you, sir, that there is today going on a companion hearing in the Philadelphia case in which Mr. Myers is not involved which will consume three days. There was a seven-day hearing in Philadelphia. There has been a total projected of at least ten days on that.

The very first bit of evidence that Mr. Prettyman brought to your attention this morning, Exhibit 1A and Exhibit 2A and I say this because I think it is important to your question, was the fact that the government informant Weinberg in concert with an FBI agent named Amoroso, posing by the name of De Vito, both of them instructed Mayor Errichetti that he had to tell—and these are exact words—he had to tell Mr. Myers that he had to be willing to introduce a bill.

He had to say "legislation," the word "willing wasn't used. He had to say "legislation." That is the feature that we wish to expand on, that the agents of the government, in approaching Errichetti, not just Weinberg, but an FBI agent himself is telling this man Errichetti that he has got to make Myers say "legislation," and Amoroso, on the witness stand, admitted that they set up this script so that it would later be played on television, as it was, for the benefit of a future jury, that exact quote was testified to by Amoroso.

What I am saying to you is that this is not a case where Mr. Myers went out and tried to peddle his office willy-nilly around the country.

This is a case where they came to him and, when they came to him, they were instructed by the government agents of what he had to repeat, and in telling him what he had to repeat they, of course, told him that it wasn't true; he didn't have to do it.

Now, did Myers properly go up there? Of course he didn't. But did he commit the offense? I say he didn't.

So we are still exploring why they singled out Mr. Myers, who had never been engaged in anything like this before, Mr. Stokes, and who had, in fact, no relationship with Mr. Errichetti before except that they knew each other as fellow politicians across the river, one in Camden, one in Philadelphia.

The point I think—to end it here—is that the government agents themselves suggested, and told in no uncertain terms, the so-called middlemen that these men had to recite in chapter and verse certain things.

Weinberg himself, in connection with another congressman, which came to trial, told that man directly, you go on stage for 20 minutes; it is all B.S. I don't want to use the words, but that is the exact quote in the transcript.

You don't have to do anything. It is all B.S. You are on stage for 20 minutes.

That is exactly the version Mr. Myers was given.

Mr. **Stokes**. If I may take just a moment more, Mr. Chairman, with one other question: Louis Johanson, the man who originally approached Mr. Myers, what was he convicted of?

Mr. **Cacheris**. The same offenses. There were three counts in this indictment. All four defendants, Mr. Myers, Errichetti, Criden and Mr. Johanson, were convicted of all three offenses.

Mr. **Stokes**. Thank you very much.

The **Chairman**. Other questions?

Mr. Livingston?

Mr. **Livingston**. You said Mr. Myers was coached by the apparent FBI agents, led to believe either by them or Mr.—Mayor Errichetti, that he had to say he was going to introduce legislation. Why?

He had to say that he was going to introduce legislation if he wanted the money, right?

Mr. **Cacheris**. He had to say it for the purposes of television that was being recorded.

Mr. **Livingston**. He didn't know he was on television?

Mr. **Cacheris**. No. They knew he was going to be on television. They wanted him to say it on television. That is what they testified to.

Mr. **Livingston**. From Mr. Myers' standpoint, the only reason he had to say it, nobody was going to beat him, rob him, put a gun to his head; the only reason he had to say that he was going to introduce legislation was in order to receive the money?

That was the quid pro quo, isn't that right?

Mr. **Cacheris**. That is correct. That is correct. That doesn't mean his recitation was a genuine one.

Mr. **Livingston**. But in fact, Mr. Myers did then say it?

Mr. **Cacheris**. Yes, sir. You have seen it on the tapes. Of course he said it. That again doesn't mean that it was a genuine promise to do anything.

The **Chairman**. Any other questions?

If there are no other questions, we will go to the argument of Mr. Prettyman.

Mr. **Cacheris**. May I ask Mr. Myers one question? I promise you it will be one question.

The **Chairman**. Fine.

Mr. **Cacheris**. Mr. Myers, you have pending before the court a hearing, is that correct?

Mr. **Myers**. Yes.

Mr. **Cacheris**. If you are unsuccessful in that and are sentenced and appeal and are unsuccessful in your appeals, would you tell the members of the committee what your position would be as regards further service in Congress?

Mr. **Myers**. I think my position would be very simple. I would have to resign. I would step down.

I am here because of one reason. If I thought I did anything wrong, I would have resigned this office last February when this story broke. I didn't do anything wrong. That is the reason I am here. I could have took the easy way out. Some people suggested I should resign from Congress and not have to face this body, not have to face first this committee and then the body. I cannot do that because I didn't do anything wrong. I did not sell out my office.

If the higher court, the Supreme Court of this land, says that the uphold the jury's verdict, I would resign my office the same minute because that is the highest court in this land.

The **Chairman**. Mr. Prettyman?

Mr. **Prettyman**. Mr. Chairman, allow me to stand. I am more used to it as an attorney.

I just begin by emphasizing the point Congressman Livingston just made: Obviously, the government wanted Mr. Myers to say "legislation" because if he wasn't willing to commit his vote, they were not willing to proceed against him.

As the Second Circuit has said, when the legislation was suggested, when you were asked to commit your vote, all you have to say is no.

I will begin, if I may, with a few remarks addressed to Congressman Murphy's statement this morning. He said that he had seen these tapes played and he had seen a lot of talk, but that he hadn't really seen the final act that he thought was necessary to call for expulsion.

Of course, Mr. Myers did commit the key act; that is, he took an envelope that he thought had $50,000 in it. And he did, as he has told us on two occasions now, bring an additional Congressman before these people.

But if what Congressman Murphy meant was that he had to go further and actually commit his vote and then vote, do something in Congress, that simply isn't the law.

The trial court instructed this jury on the four elements of bribery and specifically told them that the Congressman did not have to do anything further after he had committed himself on legislation. He did not have to vote in order to commit the offense of bribery and he was found guilty.

Congressman Murphy spoke of the will of the people of Congressman Myers' district. The will of the people does not always control or the Constitution would not give direct power to the Congress to expel someone who has been duly elected. It has been pointed out here that Congressman Myers won in his primary before he was convicted.

Congressman Murphy spoke of the tactics of the FBI. I would point out to you that Congressman Myers was contacted not by the FBI, not by anybody in the government, but by his long time friend Mr. Johanson, and it was Mr. Johanson who told him that he was going to receive money. It was Mr. Johanson that told him that immigration might be brought up, and it was Mr. Myers who willingly chose in the face of that information given to him by his friend to go to that meeting and to accept the money.

One comment about something that Congressman Myers said. He said that he was virtually tortured and forced to take, to agree to take the additional $50,000 at the January 24th meeting.

I refer you to Exhibit 7(a), page 162, where Mr. Weinberg said, "I want to make you—I want to make, you got to be paid for those other three things. Now what is it? Myers: give me 50 in addition."

That is how he was tortured and forced to agree to the 50. He wasn't tortured and forced at all. He was a willing collaborator.

I am going to confine the rest of my remarks almost exclusively to the key August 22nd meeting at which the payoff was made and almost exclusively to Mr. Myers' own words.

I pose certain questions to you, and I turn primarily to Mr. Myers himself for the answers.

Did Agent DeVito and Informer Weinberg make it clear that the promises they were extracting were for money, that this was a payoff?

DeVito. That is why we are putting up this kind of money, all right?

Myers. Absolutely.

DeVito. There is a lot of money in this, okay?

Myers. Uh-huh.

DeVito. Listen, they got tons of money and they want to assure that wherever they go, they are going to make it, right. You are being taken care of for it.

Myers. Yeah.

DeVito. The money is going to be there, and like I say, this—this is only a, you know, part of it. We will work out some more later on when, you know, when we have to make a move.

This is all the way back on August 22nd now, not the later meeting. Then to the payoff.

DeVito. Wait. I got to get a bigger envelope.

And he hands him the money.

DeVito. Spend it well.

Myers. Pleasure.

Mr. Weinberg ends it all quite appropriately when he says, we got like the goose that lays the golden egg. We all like to make a buck.

We don't have to rely on the August 22 tape. Mr. Myers said before this very committee when he appeared on September 10th that he expected to receive a hundred thousand dollars in the envelope given to him by Mr. DeVito rather than the $50,000 that was in that envelope.

What did Mr. Myers promise in return for this money? First the introduction of legislation. He, himself, brought it up, not someone else.

Myers. Where I could be of assistance in this type of a matter, first of all, is private bills that can be introduced.

Myers. All I do is introduce a private bill.

Myers. I got the clout to introduce legislation.

Myers. We can introduce the bill, sure.

Myers. To get into the country, you have to have a bill introduced. There would be a bill introduced into the committee.

DeVito. You are going to introduce a bill, okay?

Myers. Yeah.

Myers. I would have to put a bill in at that point.

Myers. At that point in time is when I introduce a bill to stop that procedure.

What would this private bill accomplish?

Myers. If nothing more, you could drag it out for years just fucking with the bill.

Myers. We drag it out as long as we want.

Myers. Now one of the keys is time. After the smoke clears and a year or 18 months pass, you are in a much better position to be dealing.

Myers. This is where we buy the time.

Myers. Well, we can stall it and stall it and then, see, this is where we can use our connections with the committee.

Would he also use his influence at the State Department?

Myers. Now we use all sorts of connections in the State Department.

DeVito. You mentioned the State Department?

Myers. I have people that to send you to, sure. I got the best guy in the world. I got—I got some real key people in State.

Myers. I will discuss further with State with my connections there and line up some things.

Did he promise to use influence, his clout, his connections?

Myers. So we have influence, we work together, we use our influence cohesively, unitedly.

Myers. What you need is the influence to have that done. You need friends in the right—in the right areas and the way to do it is the way we do it with bloc, bloc strength.

Myers. That is where we can use our influence.

Myers. The key is having the right people, being able in the right positions to try to help you within the State Department.

Myers. Going on the Appropriations Committee in January, this is—makes me very important.

Myers. With me in his corner his chances are a hundred percent better than they would be without somebody like me in his corner.

Myers. Without someone in my position, okay, you are in, believe me you are in, you are in deep trouble. You got to use inside connections to make connections.

Myers. I will deliver a lot of other people in his corner. We would use our influence as a delegation through me. Now without this introduction to the delegation through a Member, you would—they wouldn't even want to talk to you, first of all.

He perhaps said it best on another tape. "I will show you what to do and who to pay and who has to be paid."

Or, as to the Philadelphia City Council, "Those that we can't handle, we can buy."

Did he promise, even guarantee his help?

Myers. I will be in the man's corner a hundred percent.

Myers. I am looking to be a—your friend.

DeVito. The only one I don't want to defect is you.

Myers. Well, you don't have to worry about me defecting.

Myers. You got my guarantee.

Was Myers already familiar with these kinds of deals?

Myers. We put together our deals on how we are cutting things.

Myers. There is a million deals you know. It is a trading game down in Washington and this is the way it is done.

Myers. I know all sorts of little operations such as we are talking about now, but the key is you have got to deal with the right people because in this day and age people are afraid to talk.

Myers. There is a lot of—lot of action there. If you know how. If you have the right connections.

Myers. I got a lot of guys who are willing to do business.

Myers. It is survival down there, it is knowing how to make deals. It is a big pie down in Washington. Each Member sent there—each Member sent there to bring a piece of that pie back home. If you go down there and you don't, you come back without milking it after a few times, you don't go the fuck back.

Then the expression that has probably worked its way into the language by now:

Myers. I am going to tell you something simple and short. Money talks in this business and bullshit walks and it works the same way down in Washington.

Finally, gentlemen, what is perhaps the most cynical part of all of this? Congressman Myers tells this committee that he saw this whole escapade as an opportunity to bring hundreds of millions of dollars into his home district. But what did he say at the time on the film?

Myers. If you are in my district, you really give me the opportunity to then to go ahead in full force and—not that I wouldn't otherwise—but that gives me another reason, gives me a little protection and here—hey, here is a resident in my district who is investing dollars here to help my community, you know it gives me a perfect opportunity to raise hell before Congress.

Myers. Go to the City of Camden. It is a hard-pressed area. You go to the City of Philadelphia, we have pockets of poverty. This is really something that gives me the kind of material that I need to go forth, you know, and really demand that this man stay here.

Myers. Hey, this is Philadelphia. This is jobs to our city. That gives me the out that I need to go full guns.

Mr. Myers didn't want help for his district. He wanted an excuse to introduce the legislation that would earn him his payoff. Mr. Myers' story is shot through with inconsistencies and contradictions. If this was all a play, a script, a phoney scenario, how could millions of dollars have been brought into his home district to help the oppressed?

If the sheiks were going to South America, why did he have to playact that he would introduce immigration legislation and see his State Department friends? He admits getting the money. What was it in exchange for? Mouthing meaningless words to someone who wasn't supposed to believe him?

Why come on strong if DeVito and Weinberg and Cohen and Haridopolous all knew it was, in his words, bullshit, a play, a sham, a fake?

He says he was taking money for doing nothing. Does he really expect anyone to believe that even the wealthy Arab sheiks would hand out a hundred thousand dollars for a meaningless charade that they didn't even have the pleasure of observing?

In the conversation that Errichetti had with DeVito and Weinberg after Myers left on August 22nd, why was an agreement reached to give $50,000 for a Congressman's promise to do something and another 50,000 when he had to do something if, in fact, there was nothing for him to do at all?

If there was nothing wrong, why was he so concerned about being seen by someone at John F. Kennedy Airport? If there was nothing wrong, why was he so cautious in telephone calls? Why were code words used, one instead of a hundred thousand, words like that?

The Congressman has claimed time and again that it was all an act, as he said at least five times before this committee last time. "I didn't have to do anything."

But what he has never explained in court or here is this: If the sheiks knew it was all an act, why were they paying him a hundred thousand dollars? A gift?

If the sheiks didn't know it was all an act, why was he taking their money? Search the whole record and you won't find answers to those questions.

Mr. Chairman, I will be quite candid with you. I am not comfortable in the role of an accuser. My more natural role would be played in Mr. Cacheris' seat. I tend too often to forgive people, to see two sides, or gray areas, to be sensitive to the forces that place people in unfortunate situations, to find excuses, but there are two counter elements at work in this matter.

First, you and I have been given a duty to perform, and no matter how unwelcome, how unpleasant, how distasteful we find it, we must perform that duty honorably and forthrightly.

Judge Pratt told the jury that convicted Congressman Myers, "Under your oath as jurors, you must decide this case without fear or favor and solely in accordance with the evidence and the law. If the government has carried its burden as to a defendant, you must not flinch from your sworn duty, you must convict."

Neither can we flinch from doing what the Constitution and the resolution of the House and the committee's rules call upon us to do.

The other counter element at work here is that it is impossible to find excuses for a man who broke so many laws and rules, who broke them not as an individual who happened to be a public servant, but as a public servant trading upon that very elected office, who used his influence in the United States Congress as bait and barter to wring huge sums of money from those he thought needed that influence, who for purely personal gain promised, promised, promised everything, anything, his vote, his contacts, his connections, who made a mockery of the seat in which his constituents placed him, and who then—after it was all over—came and lied still once more to this very committee of his peers.

There can be no choice of sanctions for such a man. A chastisement of any kind would be an insult to every principle for which this Congress stands. This man must not remain one day longer than absolutely necessary as a member of this House. He must be expelled.

The CHAIRMAN. Attorney for the respondent?

Mr. CACHERIS. Mr. Chairman, members of the committee, I am sensitive to the heavy obligation that the members of the committee have in ruling upon the appropriate sanctions to be placed upon a fellow member of the House.

It is a very burden you bear. Expulsion is not the only remedy by your own rules, and I hope that you will not adopt that most drastic of all measures some five weeks before an election, at which point you would leave the constituents of the First District of Philadelphia without representation.

Mr. Prettyman read to you selected excerpts from various tapes that you have indeed seen, and I wondered if it occurred to you, as you listened to Mr. Myers tell—as he read them to you—how he had strong connections in the State Department, which he never had, and which he testified under oath he never had, and which no one ever disputed.

There was an old politician who was not successful, as you gentlemen are, and when he ran through an unsuccessful campaign and was called to task for some of the statements he made, he described them as campaign oratory. So Wendell Wilkie was defeated by Franklin Roosevelt because of his campaign oratory.

I think a number of the statements, in fact most all of them that Mr. Myers made on those prearranged tapes with the prearranged script were nothing more than campaign oratory which he never intended to fulfill and which he never did fulfill.

I think it is significant and should be to you, as members of this committee, that he did not do anything.

On the specific question of what appropriate censure you should give, was his conduct reprehensible? I join with Mr. Murphy and I tell you that it was.

Is he proud of his conduct and am I as his lawyer proud of him for it? Of course not.

I don't tell you that you should forgive him, but to take the ultimate act of expulsion is far too drastic, given the history of this country.

We are told—and one of your prior reports confirms—that no member has been expelled from this House since 1861. Mr. Burnett of Kentucky, expelled December 3, 1861; Mr. Reid of Missouri, expelled December 2, 1861, and Mr. Clark of Missouri, expelled July 18, 1861.

Of course, the date is significant. It was at the time of the Civil War when these members decided to join the Confederacy and they were expelled for what amounts to treason.

Unfortunately, members of this body, members of your companion body, have commited offenses for which they have been convicted, but expulsion is not the remedy, I suggest to you.

As a matter of fact, most recently—and I am not here to condemn the gentleman; he is serving his time—a congressman came before this very committee charged with serious violations of the law which impacted directly on his Federal office.

Eleven counts of mail fraud and 18 counts of false statements. That member was charged and convicted of using congressional funds for the payment of his personal expenses, using his office; Mr. Myers never did that.

Yet—and I think appropriately—this committee did not move to expel the gentleman. This committee moved to censure him. In that case, the office was used, congressional funds were used, and you did not move to expel him.

In fairness, how can Mr. Myers be treated any differently when not one finger was lifted by him to commit any act in violation of his office and the money that was paid was programmed by the FBI?

Mr. Prettyman asks you why did they pay the money? They paid the money so that they could put it on television and prosecute this congressman. They knew no act would be committed, just as he knew no act would be committed. This is not a scheme that was brought up by this gentleman. This was a scheme that the FBI set up as a net to ensnare people.

Should he have gone into it? Of course not. He has suffered the ignominy of a conviction. He has suffered the further ignominy of rampant newspaper publicity in his own district where every word that is on those tapes has been printed in newspapers.

He is not to be commended, gentlemen. I don't suggest that to you. I suggest to you if you are to give out equal justice, then you should not expel him. You should censure him. That is as severe and drastic punishment because I am told when a gentleman appears in the well of the House of Representatives, it is a far-reaching scenario.

I appreciate the time you have given us to present our defense to you. I ask you to examine your conscience and vote the appropriate sanction.

The **Chairman**. Thank you.

If there are no other proceedings at this point, do you have a motion, Mr. Spence?

Mr. **Spence**. Mr. Chairman, pursuant to rule 11(2)(k)5 and 2(b) I move we go into executive session for today and one subsequent day.

The **Chairman**. Call the roll.

Mr. **Swanner**. Mr. Bennett.

The **Chairman**. Aye.

Mr. **Swanner**. Mr. Spence.

Mr. **Spence**. Aye.

Mr. **Swanner**. Mr. Hamilton.

Mr. **Hamilton**. Aye.

Mr. **Swanner**. Mr. Hollenbeck.

Mr. **Hollenbeck**. Aye.

Mr. **Swanner**. Mr. Preyer.

[No response.]

Mr. **Swanner**. Mr. Livingston.

Mr. **Livingston**. Aye.

Mr. **Swanner**. Mr. Fowler.

Mr. **Fowler**. Aye.

Mr. **Swanner**. Mr. Thomas.

Mr. **Thomas**. Aye.

Mr. **Swanner**. Mr. Stokes.

Mr. **Stokes**. Aye.

Mr. **Swanner**. Mr. Sensenbrenner.

Mr. **Sensenbrenner**. Aye.

Mr. **Swanner**. Mr. Rahall.

Mr. **Rahall**. Aye.

Mr. **Swanner**. Mr. Cheney.

Mr. **Cheney**. Aye.

Mr. **Swanner**. Mr. Chairman, eleven members vote aye, one member absent.

The **Chairman**. We will go into executive session. The room will be cleared.

I believe counsel for both sides ought to remove themselves.

[Whereupon, at 2:30 p.m., the committee proceeded in executive session.]

ATTACHMENT II TO REPORT OF COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

United States House of Representatives Committee on Standards of Official Conduct

IN THE MATTER OF REPRESENTATIVE MICHAEL O. MYERS

INVESTIGATION PURSUANT TO H. RES. 608

REPORT OF SPECIAL COUNSEL UPON COMPLETION OF PRELIMINARY INQUIRY

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United States House of Representatives Committee on Standards of Official Conduct

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IN THE MATTER OF REPRESENTATIVE MICHAEL O. MYERS

INVESTIGATION PURSUANT TO HOUSE RESOLUTION 608

REPORT OF SPECIAL COUNSEL UPON COMPLETION OF PRELIMINARY INQUIRY

On September 3, 1980, pursuant to House Resolution 608 and Rules 11(a) and 14, Rules of the Committee on Standards of Official Conduct (hereinafter "Committee Rule"), the Committee commenced a preliminary inquiry into whether any of the offenses for which Representative Michael O. Myers was convicted on August 30, 1980, constitutes a violation over which the Committee has jurisdiction. Attached hereto are copies of the documentary evidence received in the preliminary inquiry: a copy of the relevant portions of the transcript of Congressman Myers' trial on charges of violating 18 U.S.C. §§ 201(c), 371 and 1952; copies of the relevant exhibits from the trial;[1] and a transcript of the oral testimony of Congressman Myers given before the Committee on September 10, 1980.

On May 27, 1980, Congressman Myers, along with Messrs. Angelo J. Errichetti, Louis C. Johanson and Howard L. Criden, were indicted by a Federal Grand Jury in Brooklyn, New York, on charges of bribery, conspiracy and a violation of the Travel Act. There was a 14-day trial before the Honorable George C. Pratt and a jury. The following is a summary of the evidence adduced at that trial:

In 1978, the FBI began an undercover operation, known as ABSCAM, in which FBI agents and an informer posed as representatives of Middle Eastern businessmen who were interested in investing in the United States. The operation started as a method for recovering stolen art and certificates of deposit (Tr. at 1712)[2] and was later expanded into an investigation of organized crime and political corruption.

On July 26, 1979, Anthony Amoroso, an undercover FBI agent using the name "Tony DeVito," held a meeting in Florida with Errichetti, the Mayor of Camden, New Jersey; Criden, a Philadelphia attorney; and Johanson, Criden's law partner and a Philadelphia City Councilman, to discuss a proposed casino to be built in Atlantic City by unidentified sheiks.[3] Also present was Melvin Weinberg, a convicted "con man," who was working for the FBI as a paid informant and was assisting in the ABSCAM operation. At that meeting, DeVito mentioned the sheiks' concern that instability in their country might force them to flee to the United States. There were rumors at the time that General Somoza, who had sought asylum in the United States, might be forced to leave, and the sheiks wanted to ensure that if they came to the United States, they would not suffer the same fate (Tr. 581). Errichetti replied that he could locate Government officials who would be willing to assist the sheiks with this potential immigration problem (Tr. 581).

Errichetti later explained to Criden that on a prior occasion he had been paid a substantial fee to introduce the sheiks to a Congressman, and he inquired if Criden or Johanson knew any Congressmen who would be willing to meet with the sheiks in exchange for a portion of the fee (Tr. 1128–29). Johanson contacted Congressman Myers, and Myers agreed to the arrangement (Tr. 2709–13). Errichetti then informed DeVito and Weinberg that Myers was prepared to "do anything" for the sheiks (Ex. 1A at 3), and a meeting with Myers was arranged (Ex. 3A at 2).

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[1] Relevancy was determined as follows: Special Counsel designated those portions of the trial transcript, and those trial exhibits, which he thought were relevant to the Committee's consideration. By letter dated September 3, 1980, the Congressman's counsel was given an opportunity to counterdesignate, or to suggest deletions from, portions of the trial record. Special Counsel and the Congressman's counsel thereafter entered into a Stipulation, a copy of which is attached hereto, which provides in part: "5. Those portions of the trial transcript, and the exhibits recited above, which have been designated by Special Counsel and cross-designated by counsel for Congressman Myers, shall be deemed the only portions of the trial record which will be considered relevant and material to the Committee's investigation, *provided*, however, that by so stipulating, neither Special Counsel nor counsel for Congressman Myers concedes that all such portions are necessarily relevant and material to such investigation."

[2] "Tr." references are to the trial transcript, attached as an appendix hereto.

[3] The sheiks are sometimes referred to in the record as "sheik," meaning one person, and sometimes as "sheiks," meaning two persons. These terms are used interchangeably throughout this Report.

On August 22, 1979, Myers and Errichetti met with DeVito and Weinberg at the TraveLodge Hotel at Kennedy Airport, New York. DeVito described to Myers in general terms the sheiks' desire to ensure that if they fled their country, they would be able to enter and remain in the United States, and he asked how Myers could be of assistance (Ex. 5A at 2–3). "Where I could be of assistance in this type of a matter," Myers replied, "first of all, is private bills that can be introduced" (Ex. 5A at 3). Myers explained that as soon as soon as the sheiks had entered the United States, "I'd have to put a bill in at that point" (Ex. 5A at 9). Elaborating on the process, he indicated that once the bill had been introduced, he would be able to use the hearing process to delay any action for a year or eighteen months, after which time it would be much easier to arrange for the sheiks to stay in this country (Ex. 5A at 7, 9). In addition to the introduction of a private bill, Myers and DeVito also discussed Myers' possible influence with the State Department. Myers indicated that he knew people there (Ex. 5A at 4) and volunteered to meet with them when he returned to Washington (Ex. 5A at 14).

Myers then inquired about the sheiks' business ventures (Ex. 5A at 15–16) and suggested that the sheiks invest in Myers' own District (Ex. 5A at 13, 20). According to Myers, this would provide a plausible explanation for his support of the sheiks and would make it easier for him to ensure the backing of the rest of the Philadelphia delegation (Ex. 5A at 13, 21, 28). "[T]hat gives me the out that I need to go full guns," he explained (Ex. 5A at 21).

Throughout the meeting, the Congressman repeatedly promised to assist the unidentified sheiks (Ex. 5A at 5, 10, 29). "I'll be in the man's corner a hundred percent and I'll deliver a lot of other people in his corner," he assured DeVito (Ex. 5A at 9). "Feel free to call me, and, you know, matter of fact, you can come down, we'll meet down in Washington if you want" (Ex. 5A at 22). He also commended DeVito for going about things the right way (Ex. 5A at 11). "Money talks in this business and bullshit walks. And it works the same way down in Washington," he explained (Exhibit 5A at 12).

As the meeting drew to a close, Myers again gave his guarantee that he would assist the sheiks (Ex. 5A at 29). DeVito then handed Myers an envelope containing $50,000 in cash (Exhibit 5A at 1, 29; Tr. 721). "Spend it well," DeVito said as Myers accepted the envelope (Exhibit 5A at 29). Myers replied: "Pleasure" (*id.*). Myers and Errichetti left together. There was testimony that unbeknownst to Myers, Errichetti took $15,000 out of the envelope for himself, and Criden and another attorney in his law firm took an additional $10,000 out of the envelope for themselves (Tr. 1151). Criden, pretending that he and his partner had not yet gotten their share, then persuaded Myers to let them take out an additional $10,000, leaving Myers only $15,000 of the original $50,000 (Tr. 1151, 2741–42).

Five months later, on January 24, 1980, two other undercover agents, Michael Wald, using the name "Michael Cohen," and Ernest Haridopolos, using the name "Ernie Poulos," met with Myers and Criden at the Barclay Hotel in Philadelphia. Early in the meeting, Cohen raised the subject of the sheiks' immigration problem, indicating that the situation had gotten worse in the sheiks' country (Ex.

7A at 40) and suggesting that, because of the sheiks' confidence in Myers, they were planning to come to the United States (Ex. 7A at 42). Myers responded by reiterating a point he had made at the earlier meeting—that it was important for the sheiks to invest in the Philadelphia area so that he could justify his support of the sheiks (Ex. 7A at 42–43, 58, 69–70, 79, 145–146, 174–175). "Give me a reason to be vocal," he said (Ex. 7A at 43). He indicated to Cohen, however, that if provided an adequate explanation, he was prepared to do "whatever has to be done in Congress" (Ex. 7A at 131).

Cohen explained that the sheiks were considering building a $34.6 million hotel/motel complex in Myers' District, but were concerned about the Mafia (Ex. 7A at 80–81) and about securing the necessary zoning variances and approval of the City Council (Ex. 7A at 48). Myers agreed to deal with the Mafia on behalf of the sheiks (Ex. 7A at 97, 100, 143, 149). He also promised to "use his office" to help with zoning variances and the City Council (Ex. 7A at 49), expressing confidence that he could convince the Council members from his District to vote in favor of any necessary provisions (Ex. 7A at 66). He said he would use "my influence, my office, and my personal friendship" with Council members, (Ex. 7A at 148), and he assured Cohen that the City Council would be no problem: "[C]ity council we can handle. Forget city council. Those that we can't handle, we can buy" (Ex. 7A at 147).

Another issue discussed at this meeting was the amount of money Myers had received at the August meeting. Myers expressed some dissatisfaction that he had received only $15,000, because he had been led to believe he would receive more (Ex. 7A at 121–124, 127). "The note was supposed to be a 100 [$100,000]. I was supposed to walk away with 50 [$50,000]," he explained (Ex. 7A at 128). Cohen agreed to pay an additional $35,000 in exchange for Myers' previously promised assistance with the sheiks' immigration problem (Ex. 7A at 137). He then inquired how much additional money Myers wanted for influencing the Philadelphia City Government and for dealing with the Mafia (Ex. 7A at 137–138). "Give me 50 [$50,000] in addition," Myers replied (Ex. 7A at 162). Cohen agreed to pay Myers an additional $50,000, and as the meeting concluded, Myers again reaffirmed his commitment to the sheiks: "If you have, if you even envision a problem * * *, you call me in on it" (Ex. 7A at 176).

The following day (January 25) Myers and Cohen met again, and Myers reiterated that he had thought he would receive more money than he did at the August meeting (Ex. 8A at 4–5). Cohen reassured Myers that he would be paid another $35,000 plus an additional $50,000 for the extra services which Myers had agreed to perform in connection with the proposed hotel complex (Ex. 8A at 14).

In two subsequent recorded telephone conversations, Myers raised the question of the additional money he was supposed to receive. In the first one, on January 29, Cohen assured Myers: "* * * I owe you a monies we discussed. * * * [Y]ou'll be made whole. You know I I promised you that and I I there's no way I can go back on my word there" (Ex. 9A at 1–2). Myers replied, "[a]ll right" (*id.*). In the second conversation, on January 31, Cohen told Myers: "[A]s soon as I come back I'll make you whole and, the other figure that I owe you as well" (Ex. 10A at 1). Myers replied, "O.K." (*id.*). On January 31, Cohen informed Myers that $85,000 would be delivered to at his Myers home on February 2 (Tr. at 2587–88). The money was, in fact, never delivered.

Two days later (February 2), two FBI agents went to Myers' home (Tr. at 2659). They identified themselves as FBI agents and said they were investigating the activities of Tony DeVito, Mel Weinberg, Michael. Cohen, Angelo Errichetti, and Howard Criden. The agents inquired whether Myers knew any of these people (Tr. 2660). Myers admitted knowing Errichetti and Criden but repeatedly denied that he knew the other three (Tr. 2660–61).

Myers testified in his own defense. He did not deny having received an envelope containing $50,000, nor did he deny receiving $15,000 of that $50,000 for his personal use.[4] He attempted, however, to explain the circumstances surrounding the receipt of these monies.

The following is a summary of the Congressman's testimony both on direct and cross-examination:

According to Myers, sometime in late July or early August 1979, Myers visited Councilman Johanson, whom he knew, at Johanson's request (Tr. 2707–09). Myers testified that Johanson said that he and Criden, whom Myers did not know personally, were looking into a "hotel casino deal" in Atlantic City (Tr. 2709) and that if the deal went through, Johanson would make millions (Tr. 2710). Johanson went on to say, according to Myers, that "this rich Arab was willing to pay $100,000 to him [Johanson] and Mr. Criden if they could introduce some important people to the Sheik" (*id.*). Myers testified that Johanson stated that if Myers was "willing to meet with this gentleman that there would a hundred thousand dollars and he [Johanson] would be willing to give me [Myers] $25,000" (Tr. 2711). Johanson allegedly added that Errichetti and Weinberg would each get $25,000, and that Johanson and Criden would split the remaining $25,000 (Tr. 2712).

Myers stated that when he asked what he was supposed to do in exchange for the money, Johanson replied, " 'You will probably never see these guys again. You won't have to do anything. I can assure you these people have so much money they are willing to pay that amount just to know some important people' " (Tr. 2712). Myers said he replied that so long as he did not have to do anything, it sounded "okay to me" (*id.*).

Johanson allegedly told Myers that the sheik might ask some questions about immigration because "[h]e might have to try to come to America," but that Errichetti would tell Myers "word for word just what to do and what to say" (Tr. 2712–13). Myers said he agreed to the arrangement because he thought he was doing a friend a favor, and he saw it "as a way to pick up some easy money for doing absolutely nothing" (Tr. 2713).

Myers then described the meeting that took place on August 22, 1979 (Tr. 2714–39). He explained that Errichetti, whom he knew, talked to him before the meeting (Tr. 2715–17) and told him to "come on strong. * * * Tell him [the sheik] how powerful you are. Maybe talk about immigration. You will never have to do anything" (Tr. 2717). After learning that they would meet with the sheik's representative instead of the sheik himself (Tr. 2718), Errichetti allegedly told Myers: "You don't ever have to worry about the sheik coming to America because Mel [Weinberg] already told me if he [the sheik] has to leave his country arrangement have been made in South America and they never include [sic] to come to America" (*id.*).

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[4] Myers later testified that he thought $100,000 was in the envelope because that was what he had been told (Tr. 2831).

During Myers' testimony, the tape of the August 22 meeting was played again, in sections, and Myers commented on each section (Tr. 2721–38). He testified that the things he said on the tape were neither accurate nor true (e.g., Tr. 2721), and that he was just trying to appear important (e.g., Tr. 2722). According to him, he never met with anyone at the State Department or did anything for the sheik before Congress and never intended to do either of those things (Tr. 2729–30, 2732). He explained that his expression "[m]oney talks and bullshit walks" was "a figure of speech that I use and had been using for many years" (Tr. 2728). He further explained that he had encouraged the sheik to invest in Philadelphia because "I am always lobbying for business to come into the City, whenever I get an opportunity" (Tr. 2733). He concluded his discussion of this tape: "I would have guaranteed him anything he wanted a guarantee on because I knew I didn't have to do anything and never intended to do anything and was told that" (Tr. 2737).

Myers said that after taking the envelope supposedly containing $100,000, he gave it to Errichetti and then went to Criden's office (Tr. 2739–41) in order to get his share of the money (Tr. 2915–16). There he learned that "instead of one hundred there was fifty," and stated that at that time he thought "* * * someone at the top had swindled us" (Tr. 2917, 2918). According to Myers, Criden said that $25,000 had gone jointly to Errichetti and Weinberg, leaving only $25,000, and Criden then proposed that Myers take $15,000 and that Criden's office take $10,000. Myers agreed (Tr. 2741–42).

With respect to the money, Myers said that he put it in a bedroom drawer and spent it in about two weeks (Tr. 2921–22): "It was found money so I spent it quickly" (Tr. 2742). He testified that he regarded the $50,000 as a gift (Tr. 2941) and further stated that he sought and received an extension for his 1979 tax returns because he was advised by tax counsel that the court might order him to return the money (Tr. 2940–41).

Myers said he next heard about the sheik on January 24, 1980 (Tr. 2743). He testified that he received a call from Criden, who said that a new representative of the sheik, a Mr. Cohen (Wald), was in Philadelphia working on a hotel complex, and Cohen wanted to meet Myers that night (Tr. 2743). Myers agreed to the meeting (Tr. 2744).

Myers, who said he rarely drank hard liquor and could not "handle it," testified that prior to the meeting, he had two or three beers (Tr. 2744–45). The tape of the January 24 meeting was replayed at trial, and Myers commented on segments of it (Tr. 2746–95). Near the beginning of the meeting, Myers was offered scotch or bourbon and asked for bourbon on the rocks (Tr. 2748). He was given a large glass which he said was filled half with ice and almost to the top with liquor

(Tr. 2749). Myers claimed that during the meeting he became more and more intoxicated (Tr. 2754, 2755, 2757, 2768, 2779, 2781, 2783). About half way through the meeting, he asked for and received a refill of his drink (Tr. 2775; see also Tr. 2980), so that finally, he said, he was intoxicated (Tr. 2787A. 2794. 2796).[5]

When asked why he had agreed to introduce a private bill, provided he "had a reason," he replied: "I wanted the conversation to fall in line with the first [August] meeting. * * * I also wanted to let him know I knew something about immigration" (Tr. 2750–51). He explained, however, that he tried to "talk around" the subject of private bills (Tr. 2763), and stated that he never intended to introduce an immigration bill and did not do so because he had been told he did not have to do anything, about this or any other matter mentioned (Tr. 2751, 2780, 2785, 2798, 2799).

As for the $34.6 million hotel project that was being proposed for his District, Myers said initially he had doubts about it and ultimately became convinced that Cohen was either lying or did not know what he was talking about (Tr. 2752, 2762, 2774). He further explained that because he did not think he had to do anything, he was prepared to tell Cohen whatever he wanted to hear (Tr. 2771, 2788, 2789). He testified that in fact he had no influence with the City Council and could not deliver the votes of either City Council or County officials (Tr. 2757, 2760, 2788). Moreover, he said he never talked to Congressman James J. Florio (whom he had discussed on the tape) about the sheik (Tr. 2757). Finally, Myers denied that he knew anything about the Mafia; he indicated that the names he mentioned were ones he knew only from the newspapers (Tr. 2765–67) and asserted that he had agreed to handle the Mafia problem because he knew there was no problem (Tr. 2754–55, 2764, 2789).

Myers also said he talked about getting "screwed" at the prior meeting in August in order to find out why he ended up with only $15,000 when he had been told he was getting $25,000 (Tr. 2779). When Cohen suggested that Myers was supposed to have gotten $50,000, Myers did not disagree, although he testified he knew Cohen was confused (Tr. 2782). He further explained that he requested the additional $50,000 because Cohen pressed him to give an amount (Tr. 2789).

Asked by his attorney whether he thought it was proper for him to have accepted the money, Myers replied, "Well, when I looked at this tape, I know it wasn't proper that I accepted this money but I didn't do anything wrong for it. I didn't break any laws" (Tr. 2799).[6]

On cross-examination Myers admitted that at the August meeting he promised to introduce a private bill on behalf of the sheik (Tr. 2855), and he further admitted that he himself raised the possibility of a private bill even though no one had instructed him to do so (Tr. 2854, 2892–98). He asserted, however, that he made the promise in the belief that the sheik was going to South America (Tr. 2983), and he reasserted his contention that he never intended to introduce any legislation (Tr. 2856). He stated that he lied to DeVito in order to obtain money from the sheik (Tr. 2840, 2856) and also stated that he did not believe it was dishonest to obtain money by false pretenses (Tr. 2858).

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[5] He later claimed to have consumed 16 ounces of bourbon in an hour and a half (Tr. 2808–09, 2979).

[6] Similarly, on cross-examination Myers said that while he did not regard what he had done as improper, "[n]ow that I see this [on videotape] I am embarrassed that I took money. I am embarrassed that I was drunk. I am embarrassed of my whole attitude" (Tr. 2906).

With respect to the January 24 meeting, Myers stated that he attended the meeting without any hesitation or mental reservation (Tr. 2972–73) and admitted that discussion of the sheik's possible immigration problem occurred before he had his second drink (Tr. at 2981). He also conceded that he was not drunk either at the January 25 meeting with Cohen or during the telephone conversations with Cohen on January 29 and 31. (Tr. 3001, 3014, 3021). He admitted that at the January 25 meeting, when he talked about delivering "30 or 40 members" and "a few stand-up guys", he was referring to members of Congress (Tr. 3004). Finally, he admitted he lied to the FBI about not knowing DeVito (Amoroso), Weinberg or Cohen (Wald) when he was interviewed on February 2, 1980, but explained that he wouldn't have lied if he had known he was under investigation (Tr. 3022–24).

During his re-cross examination by other defense counsel, Myers summed up his state of mind during these episodes as follows: "Well, my state of mind was that the biggest problem we have in America is our dollars going over to the Middle East paying for oil. And this seemed like a perfect opportunity to get some of the Arab money, really our money over there, back into Philadelphia for investment" (Tr. 3033).

* * *

The District Court instructed the jury on the three counts with which Myers had been charged.[7] In summary:

1. Myers was charged in the second count with bribery,[8] in violation of 18 U.S.C. § 201(c).[9] The court charged that Myers could not be convicted of the other two counts unless the jury first found him guilty of bribery. To find Myers guilty of bribery, the jury had to conclude that the Government had proven four elements of that crime beyond a reasonable doubt:

(a) *On August 22, 1979, Myers received a sum of money* (Tr. 4014). The Government contended that on that date, Myers received $50,000 from DeVito (Tr. 4015). Myers did not contest this element (*id.*).

(b) *At the time he received the money, Myers was a public official*, which the statute defines as including a Member of Congress (Tr. 4014, 4015). It was not contested that Myers was a public official (*id.*).

(c) *Myers received the money in return for being influenced in his performance of an official act* (Tr. 4014, 4015–16).[10] The Government alleged that the official acts were Myers' decisions and actions as a Member of Congress in a matter involving immigration, residency and citizenship of foreign nationals which might at some time be pending or which by law might be brought before the House of Representatives and departments, agencies and branches of the United States. Specifically, the Government claimed that Myers agreed, in return for the money, to assist a "sheik", whom DeVito claimed to represent, in coming to or remaining in this country by introducing into Congress a private immigration bill and by using his influence as a Congressman with officials in the State Department to favorably affect the sheik's residency status here. The court charged that a promise by a Congressman to introduce or support a private immigration bill would be a promise to perform an official act within the meaning of the statute. A promise by a Congressman to use the influence of his position and office to affect decisions of departments and agencies of the Government of the United States could also be a promise to perform an official act, and this could include a promise to intervene before the Executive Branch of the Government to facilitate an alien's entry into this country, to stay his deportation, or to procure permanent resident status for him (Tr. 4016–17).

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[7] The entire charge to the jury appears at Tr. 3990–4075.

[8] The indictment also charged violations of 18 U.S.C. § 2, but this "aiding and abetting" section applied only to Errichetti, Johanson and Criden (Tr. 4013–13a, 4030–33).

[9] Section 201(c) provides that "[w]hoever, being a public official or person selected to be a public official, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives or agrees to receive anything of value for himself or for any other person or entity, in return for being influenced in his performance of any official act" shall be guilty of a crime.

[10] An "official act" is defined by the statute as: "any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in his official capacity, or in his place of trust or profit." 18 U.S.C. § 201(a).

Myers contended that he did not intend to be influenced in any official acts, and that he was only pretending to acquiesce in the bargain with DeVito and to promise to perform official acts. His intent when he took the money was thus in issue. The court asked: "Did he intend, when the time came, to help the Sheik, to introduce a private bill into Congress, to intervene with State Department officials? Or did he merely pretend that he would do so without actually intending to follow through on his promise? This matter of defendant Myers' intent when he took the money is the central issue on this element" (Tr. 4017–18). The court continued: "[T]he payment received must be accompanied by a specific intent on the part of the Congressman to be influenced in the manner specified in the indictment. That intent is not supplied merely by the fact that the payment was received with some generalized understanding or expectation of benefit or good will to the donor. In order to establish the offense of bribery, the Government must show that the money was received by Congressman Myers with the intent to pursue a specific course of conduct" (Tr. 4018–19). However, the Government was not required to show that Myers performed any acts or attempted to do so, or that the acts would have been accomplished.[11] The promise did not cease to relate to an official act merely because the agent knew that the subject matter was fictitious (Tr. 4019). The jury could weigh the evidence of events after August 22 as bearing on Myers' state of mind on August 22 (Tr. 4020–21).

(d) *Myers acted knowingly, willfully and corruptly* (Tr. 4014, 4021).[12] The court charged that "[a]n act is done knowingly when done voluntarily and purposely and not because of mistake, accident, misunderstanding or other innocent reason. An act is done willfully when done voluntarily and intentionally and in violation of a known legal duty. An act by a public official is done corruptly when done voluntarily and intentionally and with the bad purpose of accomplishing either an unlawful end or result or a lawful end or result by some unlawful means. The motive to act corruptly ordinarily is with the hope or expectation of, or in return for, either financial gain or other benefit to one's self or some aid, profit or benefit to another. So, a public official acts corruptly whenever he willfully solicits or accepts money in return for being influenced in his official action. It does not matter that he intends to turn over all or part of it to others" (Tr. 4021–22).

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[11] However, the jury was allowed to consider the absence of any evidence of specific acts implementing his promises as bearing upon the question of his intent (Tr. 4020).

[12] The court also instructed the jury on the lesser-included offense of receiving a criminal gratuity in violation of 18 U.S.C. § 201(g). The principal difference between this offense and bribery is that a corrupt payment and a specific intent are not required in order to make out a criminal gratuity offense (Tr. 4023–28). This offense will not be discussed further in view of the fact that the jury convicted Myers of bribery rather than the lesser-included offense of receiving a criminal gratuity.

2. The court next instructed the jury as to the Travel Act, 18 U.S.C. § 1952, which was charged in Count 3 of the indictment (Tr. 4033–40).[13] Four essential elements of the offense each had to be proven beyond a reasonable doubt:

(a) *On August 22, 1979, Myers traveled in interstate commerce* (Tr. 4036, 4037). There was evidence that he traveled from New Jersey to Kennedy Airport in New York State (Tr. 4037).

(b) *Myers did so with intent to promote or carry on an unlawful activity, namely, receipt of a bribe* (Tr. 4036, 4037–38).

(c) *After he traveled with such intent, he performed an act either to carry on or promote the unlawful activity, or to distribute its proceeds* (Tr. 4036, 4037–38).

(d) *Myers acted knowingly and willfully* (Tr. 4036, 4039). These terms carried the same definition as when used in the bribery statute (Tr. 4039).

3. Turning to the conspiracy charge,[14] Count 1 of the indictment, the court first read to the jury the indictment, (Tr. 4040–44) which, in essence, charged Myers with having conspired with one or more other persons to commit bribery (Tr. 4045). The four essential elements of this crime are as follows:

(a) *The conspiracy described in the indictment was wilfully formed and was existing at or about the time alleged, i.e.*, on or about and between July 26, 1979, and February 2, 1980 (Tr. 4040, 4045, 4049–50). A conspiracy, the court charged, is a combination of two or more persons who act in concert to accomplish some unlawful purpose or some lawful purpose by unlawful means (Tr. 4047). The gist of the offense is a combination or agreement to disobey or disregard the law (*id.*). Mere similarity of conduct will not suffice, but neither need it be shown that an express or formal agreement was entered into (*id.*). It is sufficient if the conspiracy existed for some time during the entire period alleged in the indictment (Tr. 4049).

(b) *Myers willfully became a member of the conspiracy* (Tr. 4045). To act or participate willfully means to act or participate voluntarily and intentionally, in violation of a known legal duty (Tr. 4051).

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[13] Section 1952 provides in relevant part: "Whoever travels in interstate commerce with intent to distribute the proceeds of any unlawful activity, or otherwise to promote or carry on any unlawful activity, and who thereafter distributes the proceeds or promotes or carries on the unlawful activity," is guilty of a crime (Tr. 4034).

[14] The conspiracy statute, 18 U.S.C. § 371, reads as follows: "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States or any agency thereof in any manner or for any purpose, and one or more of such persons do any acts to effect the object of the conspiracy," each is guilty of a crime.

(c) *One of the conspirators thereafter knowingly committed at least one of the ten overt acts charged in the indictment*[15] *at or about the time and place alleged* (Tr. 4045–46). In order to convict Myers, the court instructed, it had to be proven beyond a reasonable doubt that at least one of the overt acts occurred while Myers was a member of the conspiracy (Tr. 4058).

(d) *Such overt act was knowingly done in furtherance of some object or purpose of the conspiracy* (Tr. 4046). The overt act must have followed and tended toward accomplishment of the plan or scheme (Tr. 4058).

Applying these general considerations to the conspiracy alleged in this case, the court charged:

> [Y]ou must keep in mind the particular conspiracy with which these defendants are charged. It is to defraud the United States of the faithful and honest service of Congressman Myers and to have him receive money—as a bribe or gratuity—in connection with certain matters pertaining to the immigration, residency and citizenship of a fictitious Middle Eastern business man.
>
> In a short, the defendants are charged with a conspiracy relating to Congressman Myers and the immigration, residency and citizenship status of the Sheik. They are not, repeat not, charged here with any conspiracy with respect to: any other Congressmen; any Senators; any hotel projects or zoning problems in Philadelphia; any gambling casino projects in Atlantic City; any port development projects in Philadelphia; any dealings with organized crime[,] unions, or local or state officials, or any other matters. [Tr. 4060.]

As to the events in January 1980, the court charged:

> Also, with respect to what happened at the Barkley [Barclay Hotel], that evidence I admitted to assist in determining

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[15] The indictment charged twelve overt acts, but the court struck the last two from the jury's consideration (Tr. 4095–96). Then ten charged overt acts were as follows:

1. On or about July 29, 1979, the defendant ERRICHETTI told Melvin Weinberg during a telephone conversation between Florida and New Jersey that the defendant MYERS was prepared to meet with Special Agent Amoroso and Weinberg.

2. On or about August 5, 1979, at John F. Kennedy International Airport, within the Eastern District of New York, the defendant ERRICHETTI met with Amoroso and Weinberg and told them that the defendant MYERS would assist the foreign businessmen in an immigration matter in return for a payment of money.

3. On or about August 7, 1979, in Cherry Hill, New Jersey, the defendants ERRICHETTI and CRIDEN had a meeting with Amoroso and Weinberg.

4. On or about August 22, 1979, the defendant CRIDEN travelled by automobile from Philadelphia, Pennsylvania, to John F. Kennedy International Airport accompanied by Michael Criden.

5. On or about August 22, 1979, the defendants MYERS and JOHANSON travelled by automobile from New Jersey to John F. Kennedy International Airport.

6. On or about August 22, 1979, the defendant ERRICHETTI travelled by automobile from New Jersey to John F. Kennedy International Airport accompanied by Joseph DiLorenzo.

7. On or about August 22, 1979, the defendants, MYERS, ERRICHETTI, JOHANSON and CRIDEN had a meeting at John F. Kennedy International Airport.

8. On or about August 22, 1979, at the Travelodge International Motel, within the Eastern District of New York, the defendants MYERS and ERRICHETTI had a meeting with Amoroso and Weinberg during which the defendant MYERS received Fifty Thousand Dollars ($50,000.00) in return for being influenced in his performance of official acts in an immigration matter on behalf of the foreign businessmen.

9. On or about August 22, 1979, the defendants ERRICHETTI and CRIDEN had another meeting at John F. Kennedy International Airport, said meeting being different from the meeting referred to in Overt Act 7.

10. On or about August 22, 1979, in Philadelphia, Pennsylvania, the defendants MYERS, JOHANSON and CRIDEN held a meeting at which a portion of the Fifty Thousand Dollars ($50,000.00) was divided among themselves.

[Tr. 4054–56]

what was the defendant Myers' state of mind back in August. Was he pretending? Did he take the money in return for being influenced in an official act? Did he take it because of an official act? Did he act knowingly and corruptly? Those are, as I indicated, issues which you must determine.

And you may weigh his conduct and statements in January in determining what his state of mind may have been back in August. [Tr. 4064.]

* * *

On August 30, 1980, the jury returned a verdict against Congressman Myers of "guilty" on all three counts (Tr. 4130–32).

* * *

On the basis of this Preliminary Inquiry, the Committee is required to determine whether one or more offenses were committed by Congressman Myers over which the Committee has jurisdiction (Committee Rule 14). The Rules of the House of Representatives provide that the jurisdiction of the Committee extends to any alleged violation by a House Member "of the Code of Official Conduct or any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member * * * in the performance of his duties or discharge of his responsibilities" (Rule X, Cl. 4(e), Rules of the House of Representatives—hereinafter "House Rule").

Special Counsel submits that a review of the evidence, the instructions and the verdict in the Congressman's trial reveals that he violated three laws applicable to his conduct as a Member and at least three House Rules relating to such conduct.[16]

The statutes which Congressman Myers was convicted of violating, 18 U.S.C. §§ 201(c), 371 and 1952, establish a minimum standard of conduct for House Members by making it illegal for any public official to accept a bribe, to conspire to accept a bribe, or to travel in interstate commerce with intent to accept a bribe.

Each offense carries a possible penalty—in addition to a substantial fine [17]—of from five to fifteen years' imprisonment.[18] In order to convict, the jury had to have found that 12 separate criminal elements were proven beyond a reasonable doubt—including the fact that Myers corruptly received $50,000 in return for being influenced in his performance of at least one official act as a Congressman.

House Rule XLIII, Clause 1, provides in pertinent part: "[a] Member * * * of the House of Representatives shall conduct himself at all times in a manner which shall reflect credibility on the House of Representatives." The pertinent portion of House Rule XLIII, Clause 2, provides that "[a] Member * * * shall adhere to the spirit and the letter of the Rules of the House of Representatives and to the rules of the duly constituted committees thereof." And House Rule XLIII, Clause 3, provides in pertinent part: "A Member * * * of the House of Representatives shall receive no compensation nor shall he permit any compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress."[19] The evidence in Myers' case reveals that all three of these Clauses were violated. Clearly, conspiracy to accept a bribe relating to a Congressman's legislative duties, traveling in interstate commerce with intent to do the same, and actually accepting such a bribe, are acts inconsistent both with conduct reflecting creditably on the House and also with adherence to the various rules applicable to Congressman Myers. They thus are acts which violate Clauses 1 and 2. They are also acts consistent with the receipt of money by virtue of improper influence exerted because of Myers' position in Congress, and therefore violate Clause 3.[20]

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[16] This submission and subsequent comments by Special Counsel are made pursuant to Committee Rule 11(a)(E), which authorizes the staff of the Committee to make "a recommendation for action by the Committee respecting the alleged violation which was the subject of the inquiry."

[17] Sections 371 and 1952 each carries a possible fine of $10,000, and Section 201(c) carries a possible fine of $20,000, or three times the monetary equivalent of "the thing of value" given in exchange for the performance of official acts, whichever amount is greater.

[18] Sections 371 and 1952 each carries a possible prison term of up to five years. Section 201(c) carries a possible prison term of up to fifteen years.

In view of the evidence in this case and the nature of the offenses of which Congressman Myers was convicted, it is the recommendation of Special Counsel that the Committee conclude that offenses were committed over which the Committee has jurisdiction. Special Counsel further recommends that the Committee hold a disciplinary hearing for the sole purpose of determining what action to recommend to the House respecting Congressman Myers (Committee Rule 14). In the event the Committee does hold a disciplinary hearing, Special Counsel is required to submit a recommendation concerning the appropriate sanction (Committee Rule 16(f)). Because of the nature of the evidence and the gravity of the offenses, it is the present intention of Special Counsel to recommend that Congressman Myers be expelled from the House of Representatives.

Conviction of the crime of bribery alone indicates a fundamental disregard for the integrity of the legislative process and strikes at the heart of a Congressman's most basic duties. The continued participation by such a Congressman in the important deliberations and decisionmaking of the House of Representatives brings discredit upon the entire Congress, upon the people he represents, and upon the

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[19] Clause 3 is comparable in many respects to Rule 5 of the Code of Ethics for Government Service, House Concurrent Resolution 175, 72 Stat. pt. 2, p. B12 (July 11, 1958), which by tradition, precedent and subsequent statute carries the force of law. *See, e.g.*, H. Rept. No. 1364, 94th Cong., 2d sess at 2 *et seq.*; H. Rept. No. 1742, 95th Cong., 2d sess. at 3; H. Rept. No. 856, 96th Cong., 2d sess. at 5; Pub. L. 96-303, 94 Stat. 855 (July 3, 1980). Rule 5 provides in pertinent part that "Any person in Government service should * * * never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his government duties." *See also* Rules 6 and 9 of the same Code of Ethics for Government Service.

[20] It could be persuasively argued that Congressman Myers also violated House Rule XLIII, Clause 4. This Clause prohibits a Member from receiving more than $100 per year, directly or indirectly, from any foreign national or agent of a foreign national or from any person having a direct interest in legislation before the Congress. Although the sheiks were fictitious—DeVito and Cohen were not truly agents of a foreign national, and no one involved actually had a direct interest in legislation—Congressman Myers did not know this and in fact thought he was dealing with people having precisely those interests. Clause 4 obviously was intended to address a Member's state of mind rather than facts which are true but unknown to him. The situation is thus analogous to that before the District Judge, who instructed the jury in effect that Myers could be corruptly influenced in his performance of an official act even though there was no sheik and DeVito knew it (Tr. 4019).

Special Counsel nevertheless does not press this argument because he submits there are clear violations of Clauses 1 through 3.

Nation as a whole. This is uniquely a case calling for the imposition of the maximum sanction of expulsion.

Respectfully submitted,

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September 10, 1980.

[APPENDIX 1 TO REPORT OF SPECIAL COUNSEL UPON COMPLETION OF PRELIMINARY INQUIRY]

TRANSCRIPT OF STATEMENT BY REPRESENTATIVE MICHAEL O. MYERS BEFORE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

(September 10, 1980)

IN EXECUTIVE SESSION

The **CHAIRMAN.** * * *

Then for the expedition of this meeting today, if Mr. Myers, would you state what you wish to state.

Mr. MYERS. Yes, Mr. Chairman.

I think, Mr. Chairman, first of all I should probably start off by explaining that a lot of things that are not on tape is the reason I am here today, is what brought me to that meeting in New York, and the things that led up to the initial meeting which took place August 22 of 1979.

First of all, I think I should probably lay out some of the characters that were involved, some of the people that introduced me to these representatives of the Arab sheik and try to put in in context, what actually happened, which you will not see on the film. That is the reason I start off that way.

First of all, a friend of mine, a ward leader in the City of Philadelphia, an elected city councilman named Louis Johanson, who is a political friend of mine and a personal friend of mine, we both have a summer home in the same location in Longport, New Jersey.

He had contacted me early August or late July of 1979 and he told me he would like to talk to me. So I said, sure, come on over. So he stopped over at my place and we got together. He told me about a business proposition which him and his law partner, a Mr. Criden, was involved with, a transaction of a hotel casino in Atlantic City, New Jersey.

So, he went on to tell me that his law firm was handling this transaction, it was around a $100 million transaction, and the firm was in a position to probably make a fee in the millions, several million dollar fee for the transaction. So, he told me that he had met with some representatives of a rich Arab sheik whose name he did not give me, and they had met in Florida, upon a yacht that was called the "Left Hand," and that they were assured at that meeting that the Arabs were interested in this kind of investment, and that it looked good, the deal should go through without any problems, and that as soon as they got back to London, they would put the package together.

So anyway, he went on to tell me that when he went down to Florida, he brought with him a copy of a lease agreement that he had from the owners, agreement of sale. He brought a feasibility study. He brought all kinds of architectural plans of the hotel.

This was a legitimate hotel casino deal in Atlantic City. He was very excited about the deal. He even told me he was going to retire, and get out of politics, and he was looking for a permanent retirement.

The CHAIRMAN. Mr. Johanson?

Mr. MYERS. Yes. Because it was such a lucrative transaction. It was the biggest deal of his life, and he could get out of politics. I was happy for him. I told him that. He went on to tell me that his law firm was in a position to pick up a $100,000 fee if they would introduce the sheik to some important people. So I told him that, you know, it seemed like a fairytale to me.

I never heard of anybody willing to pay that kind of money just for meeting people. So he went on to tell me, I said, did you check these people out, are they for real, I never heard of such a story. So he told me him and his law partner, the law firm had checked on Abdul Enterprises and checked with the Chase Manhattan Bank in New York, and they were told by the bank that Abdul Enterprises had $400 million on deposit in that bank.

Now, it later came out in the trial that one of the government witnesses, one of the FBI agents, had told the court that he instructed Chase Manhattan to give those statements out to anyone asking about Abdul Enterprises. So that, you know, this legitimate transaction, of course, is what led me into this, to try to help Mr. Johanson out.

He tells me about the $100,000 that he would get, the law firm, and he was willing to give me a $25,000 gift out of that $100,000. The other money, he said he was going to have to give some back to the Arab representatives. And then there was the Mayor of New Jersey, Mayor of the City of New Jersey, Camden, Mayor Angelo Errichetti, to get some of it, too, because he was involved in it, too, in the transaction in Atlantic City.

I said, what do I have to do. He said, you don't have to do anything, and you probably will never see these people again. So I said, what do I have to talk about? They are going to ask me some questions. Obviously if I go to a meeting.

So, I was told that the sheik himself did not speak English, and I would have to absolutely say nothing to him because he didn't understand English. He told me that there may be some talk about immigration to America, in case there was ever a problem in the sheik's homeland, which I was never told where it was. I never had an idea where the homeland was.

So, I told him, if that was all I had to do, I never had to do anything, that, fine, I would be happy to meet with him. So I told him to set up the meeting. So the next time I heard from Lou Johanson was on the 21st of August, which would be the day prior to the meeting in New York.

So, what took place at that meeting, he came to my house, down at the shore again, we had been in recess during the month of August 1979. I was down at my summer home. He told me that the meeting had been scheduled for the next day in New York, and that we were going to leave early, we should leave early in the morning of the 22nd, and that I would meet with Mel Weinberg and Mayor Errichetti, and

I would be instructed on what I should say and how I should react in front of the sheik.

So, I said okay, fine. That was about the extent of it.

The next morning him and I left for New York. We drove up in my car, and we met at the Kennedy Airport, is where we was to meet Mayor Errichetti and Mel Weinberg. We got there I would say around 10:00 o'clock in the morning.

The CHAIRMAN. "We" is you and——

Mr. MYERS. Me and Councilman Johanson. We waited there I would say for an hour and a half before anybody showed up. Just seated in the lobby, reading the paper, waiting for Weinberg and Errichetti to show up.

Around 11:30 Weinberg does not show, but Errichetti shows, along with Mr. Criden and a couple of other people, Mr. Criden's son who drove him up there, and I think the Mayor's chauffeur So the Mayor said plans had changed a little bit, that Mr. Weinberg was not able to make the meeting to instruct me how I should act and what I should say, that he was going to give me my instructions.

Him and I broke away from the crowd, the main group of people that was assembled there. We went over the side in the hotel—I mean in the airport lobby, and we talked there for about 15 or 20 minutes. He told me that the only thing I had to do was—still under the impression I was going to meet with the sheik himself, he didn't talk English, come on strong, he likes tough guys, he said act like a tough guy, a former longshoreman, he likes guys that come on strong.

He told me, he says, you saw me on TV many times. You have to be real positive, tell him whatever he wants to hear, tell him anything. I said, he understands nothing. He doesn't understand anything you are saying. As a matter of fact, if you get a little mixed up, start talking about the Phillies, meaning the Philadelphia Phillies, because he didn't know what I was talking about anyway. So he told me there may be some talk about immigration, if anybody would bring it up, just go along with whatever they say. He says you are never going to see these people again, you don't ever have to do anything, you have no problems.

I kept asking that very question. I was assured by him time and time again that there was nothing to be done or ever anything that I would have to do as a member of Congress.

So that was about the extent of the meeting. Come on strong, it is all play acting. Mel Weinberg had, of course, instructed the Mayor to do this. It would be a 20-minute performance, and that would be the end of it.

So he left the airport, and I followed about ten minutes later, and I had an arrangement to meet him in the lobby of the TraveLodge Hotel, which is about a mile away from the airport.

So, when I got there, he was standing in the lobby, right by the elevators there. I walked in, he said there has been another change in plans. He says the sheik will not be able to make the meeting because he is tied up at other meetings. He said, but you are going to meet with a couple of the representatives of the sheik, and the representative of the sheik was Mel Weinberg, who was a part of the meeting, who I was told was in on the piece of what monies was going to come back through Criden's law firm, and that if I had any problems, Mel would assist me, if it was an area that I didn't understand or a question I couldn't answer, that he would pick up the slack and get on another subject.

Of course the Mayor was to be in the room with me also.

Now, at this point in time I was told about Tony DeVito, who turns out to be Special Agent Amoroso. He was the representative of the sheik that I would meet with. Also I was told at that time that—now I started questioning—I can't talk about the Phillies now, this guy understands English, what do I say if he asks any questions I am cloudy on.

He says, come on strong, tell him whatever you want to tell him. We are there to back you up, if you have an area you might have a problem in. I said, what about immigration? Is he going to get into that, talk about that? Well, he said he might touch upon that.

But let me tell you something. Weinberg has assured me that is not even a problem because arrangements have already been made for the sheik to go to South America, should he ever have to leave his homeland. So I was assured that if the sheik ever had to leave his homeland for political reasons or whatever reasons, that he wasn't coming here anyway.

So I said, okay, as long as I had a clear understanding I had to do nothing and wasn't expected to do anything. That was the agreement.

Up to the meeting we go and, of course, the rest of the meeting is on tape. I start right off. Errichetti starts the meeting over. This is Congressman Myers, he says. Tell him about yourself.

He starts off by saying, for instance, in the first statement that he is the leader of a six-man delegation from Philadelphia. I mean there are only four members from Philly. So in my quick summary of my activities here, I pick up his mistake and say, well, includes two southern counties. So I start right off strictly coming on strong with the B.S. and I tell him how important I am and all this stuff, on and on and on.

Anything he asks, that is no problem. He asked about the State Department. I said, don't worry about that. I have that under control.

I said, I have important people over there.

He said, who are they?

I said, I cannot give you a name right now because I didn't know nobody at the State Department.

So he said, what could you do?

I said, well, there is a lot of ways of doing things with immigration. I could introduce a private bill.

He said, okay, that sounds good. He says I could tell the sheik you will introduce a private bill.

I said, yes, you can tell the sheik that, and we went on and on, and we talked about all kinds of other investments in my district, which, of course, I was told ahead of time about the investments, about a third container pier, coal-exporter terminal, a hotel, mortgage companies and on and on and on about what they were going to do in my district as far as investing bucks.

I personally saw this as a way to help a friend, to land the hotel casino deal in Atlantic City. I also saw it as a way to pick up some money for doing nothing, which I am not proud of, but that is the way I viewed it at the time.

I also saw a great opportunity to have all this Arab money spent in my district, hundreds of millions of dollars, and I thought it was the right thing to do at the time.

Like I said, I am not proud of what I did, but I don't believe it is criminal. I did not see where I broke any laws. And I am saying to you that I never intended to break any laws, and I was told time and time again that I didn't have to do anything wrong. I was assured that.

When I was told about the possibility of the sheik coming to America didn't even exist because he had already made arrangements to go to South America should there be a problem, and that is brought up in the tape by Mr. Errichetti--well, there is no problem now he says, none really exists, and that is basically the story.

And, of course, after we talked for about 15 or 20—I guess 20 minutes or so, I left the room and, of course, when I left the room, Mr. Amoroso handed me a package. In the package was $50,000, which I didn't know what was in the package at the time.

I thought it was a hundred thousand dollars, to be honest with you, but it turns out it was fifty, and I had an agreement to walk outside the door and hand it over to Mayor Errichetti, right outside the door, and he would in turn go back in and give the representatives of the sheik their piece—their share of the fee that the law firm was to get.

I went back to Philadelphia. Later on I met up with Criden and Johanson. Johanson and I went back to Philadelphia together and later on Criden came down to his law office. He said there was another misunderstanding.

Instead of being $50,000, it was only $25,000. So——

The CHAIRMAN. You walked out of the room with the money, but you didn't ever check——

Mr. MYERS. I never looked at it. I never opened the package.

The CHAIRMAN. When did you first know about how much was in it?

Mr. MYERS. When I got back to Philadelphia.

The CHAIRMAN. You carried it all the time without looking at it?

Mr. MYERS. I carried a sealed envelope in the room through the door, and then I handed the package over to Mayor Errichetti, and then I never saw it again.

I left on the elevator. He stayed on the same floor. Now, I was told that he was going back in to see Mel and Tony and give them their piece of the action, so I went back to Philadelphia, waiting on Mr. Criden to get his little fee, and he came down and he was going to give me $25,000, which he promised to give me.

When he gets back anyway to Philadelphia, he tells me there was a misunderstanding he said of $100,000. It was only $50,000 in the envelope, so much had to go back to the Mayor and to Mel Weinberg and Tony Divito, and $25,000 was left. So he said to me, well, what do you think? Would you be willing to take fifteen?

So I said, well, for doing nothing, I don't care. I will take the fifteen. So I got $15,000 handed to me, which I took, put in my pocket and left with, and that ended any further contact with any of these people for approximately six months.

Six months later I got a phone call that—I got a phone call from Mr. Criden down in Washington. It happened to be on the Thursday we were adjourning for the week, and he said to me that he had received a phone call from Mel Weinberg and some of the Arab representatives were in Philadelphia exploring a hotel complex that they were going to build there, and they would like to say hello to me, and why don't I stop up.

I told him I was coming into town that night and he also told me I impressed them, and they would like to say hello. He told me that the hotel was going to be built in my district. So that night, when I went back to Philadelphia, I met with these people again.

At that point in time, that is all a matter—of course, there was a tape made of that meeting. It is a very lengthy meeting. That is where—I had a few beers before I got there. When I got there, I had two big glasses of bourbon, two very large glasses of bourbon they had there. Of course, I asked for it. They didn't force me to drink it.

By the time the hour and a half meeting was over, I was pretty intoxicated. I was pretty loose with the tongue. I was cursing a lot. Any problem they had, I solved it.

They got into all kinds of talk about Mafia. I told them I could handle any Mafia problems; that is not a problem.

They were concerned about port, union problems. I could take care of all that.

They were concerned about city council. I could handle that.

They were concerned about zoning problems, which I could handle.

I guess there was 15 problems or so that they kept throwing up, and no matter what they were, of course, I could handle them because they were not problems.

That is the reason I could say I could handle them. They were talking about Mafia in the port. I worked in the port for 13 years. There was never a Mafia problem in the port of Philadelphia. So it didn't exist.

So for me to be able to handle a problem that didn't exist was very simple to do and, of course, these were all local things, really as far as a member of Congress, I would have no real say over anyway; these were city council matters and local zoning matters.

But I assured them whatever they wanted to hear that I could take care of it and that went on and on and round and round for an hour and a half, and that was about the extent of that meeting.

The CHAIRMAN. Did they pay you anything more than the $15,000?

Mr. MYERS. No, but we got into a discussion at that point in time about money, and I told them—I didn't know—this was new agents again. When we got to Philadelphia, instead of Tony Divito, there was a Michael Wald, who was using the name of Michael Cohen. And there was another agent, Ernie Haridopolos, and he was posing as Ernie Pollis, a representative of the Arab sheik.

Now, these were two new people. I didn't know what they knew about the first meeting whether they were hooked in with Mel Weinberg and a part of anything he was doing, I didn't know this.

The CHAIRMAN. Who set the second meeting up?

Mr. MYERS. The second meeting was set up—I got called from Howard Criden to attend the meeting. I went to that meeting. More money was brought up at that point. I told him I had been misled, at least I thought I was misled. I got screwed out of what I was told I was to get. He thought I was to get fifty thousand. You were supposed to get fifty thousand. I said I got fifteen.

He said to me, well, we owe you 35.

Now, really, they owed me ten, if they owed me anything. When he said we owe you 35. I didnt' say nothing. I just figure if he owes me 35, that is fine with me.

He went on insisting he owed me 35, so then we are talking further and further in the conversation.

We want to come up front with more money, what do we have to do with the Mafia, what does it take, what do we have to give to port officials, to councilmen this one, and I kept insisting through and through, it is not a problem.

You don't have a problem in this area. I told them, look, you cannot come into this town or any town with bags of money looking to hand it to everybody you see, but they tried to put a price on everything they want to do when there wasn't a need for it or a price.

I told them I am trying to save you money. They told me about the hotel. I knew these guys were full of B.S. through this meeting because they were telling me about a hotel they were going to break ground in six to eight weeks, break ground on a hotel, and then they are worried about zoning problems, and I know zoning matters is already resolved when you are going to break ground.

My feeling was these guys were ripping their employer off, ripping the sheik. I figured they had a live wire over there and just cleaning him out. That was my feelings.

I kept trying to get them to tell me some information about Weinberg. They wouldn't give me any information. So we went round and round for an hour and a half and, of course, did everything except—I guess, start World War III. That is what I agreed to do.

Basically they were all local issues, all local issues. Of course, none of it ever developed, or anything like that, and the bottom line was they said we want to give you some additional money for all these other things.

So that is where we talk about another $50,000.

So now it is 35 that they owe me, and they are going to put another 50 on top of that to bring it up to 85 in addition. And I just don't say anything. I don't say no or say yes.

They are talking all these big figures. So what happens? You know, of course I never get the money or anything like that. It is just to lead me on. Then they——

The CHAIRMAN. Fifteen was all you got?

Mr. MYERS. Fifteen was the total amount of money I received. We get into discussions, for instance, about going across the river into New Jersey, running an excursion from my district to Atlantic City; using limousines, which is unheard of. They were way out of line.

They talked about coal, so we talked about—for instance, when you go to New Jersey, he said we may have some interstate problems.

I said, you don't have any problems. I don't see any interstate problems that you have.

I said Florio would do anything he could to help you if it is going to mean dollars to New Jersey.

They try to get me to arrange a meeting with Florio. Of course, I told them it wasn't necessary to meet with Florio, you don't have a problem here.

So they tried to get me to set a meeting up with Florio several times, which, of course, I told them wasn't necessary. I didn't think they had to meet with Florio.

Then when they talked about building a coal pier in my district to export this Pennsylvania coal, that is how we got talking about the coal fields, opening up the Pennsylvania coal fields. That is how I got involved with the name of Ray Musto.

They said, yes, we know about Musto. We would like to meet him, and they tortured me to bring this guy in. Then he was not a congressman; he was just a candidate running for special election.

So they asked me, well, what should we do with him?

I said, well, if you want my opinion, I would give him a $10,000 campaign contribution.

Well, no, we want to give him $50,000.

I said, well, I don't know why you want to give him $50,000. It is not necessary. I think you are crazy.

Well, we got so much money, the Arab, he is more impressed, the sheik is, if he gives you a big gift that impresses him, because he has tons of money, it doesn't matter if it is 50,000 or 300,000; makes no difference to him.

He wouldn't even know it was taken out of his account.

Everything was done with just tons of money that they tried to make an impression upon me. That is all they talked about.

Outside the hotel, for instance, they want to send their chauffeur for me. They had two limousines parked with chauffeurs standing by the door to meet their representatives. They wanted to send planes to pick me up. Everything they done was on a very large scale, you know, to impress me with their money. Even the room they used at the Barkeley was the finest room you could use in a hotel, like $400-a-day room.

Everything they done was just so plush. Of course, to impress me that this was for real.

So they pressed with Musto. They called me down here. The agent himself called me half a dozen times, and I wasn't really interested in calling Musto, but I thought maybe it would be good to call him because I know Ray was in a tough campaign; he was looking for some campaign money.

So I decided to call. I called him. Of course, I had knew Ray from serving in the Pennsylvanian Legislature with him. He told me that he would be happy to come down and meet with these people.

I told him what they were interested in. You will see it in tapes if you view them or in the transcripts. That they already had leases up in his county, where he is from, in his district, coal leases to take the coal out of the ground within 8 years, and you know even the way they talked about leases I knew they didn't know what they were talking about.

He says he has an 8.6 year lease. I said I never heard of a lease like that. If it would be five years or maybe even eight years, it would be understandable, but 8.6 years. I never heard anybody talking about leases using those terms.

But the guy was fishing. He didn't know what he was talking about. Any area he got into, he would explore it. If it happened to be a member's district that happened to have mushrooms, he would say they were in the mushroom business. Whatever it was, that is they way they were traveling.

So I brought Musto down. Musto met me at my office. I told him basically exactly what I was told. These people had tons of money, they were interested in investing in his district, in my district, in this part of the country. They wanted to give him a campaign contribution.

He said, well, what do I have to do. I said, you don't have to do anything. I never talked about anything, immigration or anything, because they never did ask about anything, so I certainly didn't offer anything.

Ray went to them, went to the meeting with me, and he talked to them for about 15 or 20 minutes, and during that period of time they were saying, well, we may have some problems with DER, Department of Environmental Resources; that is a State agency.

Of course, they issue coal mine permits to remove coal. Ray said that he would be happy to work in any way he could to help them.

He said he was interested, his whole campaign was based on opening up the coal fields. He said that he knew some of the local officials that they should meet, you know, start opening up doors, to have the deal with the local coal miners' unions up there, to get to know them, and to hire union employees.

He also told them that they would have to take out—post bonds as far as the Land Reclamation Act is concerned, to reclaim the land after they removed the coal. He said there was absolutely nothing anybody could do about that; that was a necessary requirement.

They agreed to all that stuff. They said they wanted him to be their friend. They didn't have any problems at this point in time, but there may be one down the road somewhere, and they want a friendly face.

And Ray said, well, if you are willing to open these coal fields up, you have a friendly face. I will do whatever I can to help.

So they asked him a question about a vote and he said, they said, well, we will have to tell the sheik more than just that you will be a friendly face. Will you vote, will you give us your vote in Congress when you get there, or in the State House now, being you are there?

He said, well, what vote are you talking about? If there is a vote to open up coal mines, I am going to be for that automatically.

What vote are you talking about?

So the agent told him, he says, I cannot be specific about a vote, because I don't know what vote I am talking about. Can we count on any vote?

So he said, well, I couldn't say yes to that. I have to be honest and say no. I don't know what vote you are talking about. If you can tell me what vote you are talking about, if it is going to help my district, I am going to be for it anyway.

At that point in time I told them, I said, I cannot believe you would ask a man for his vote. You know what you asked him. I never heard anything so ridiculous. So they said, well, we probably framed it wrong. Yes, that was wrong to do. We shouldn't have done that, we should have—we shouldn't have done that. Maybe we can talk to him later.

I said, well, it is up to him. I will see if he wants to meet with you later. He gave me his card. He said, you can stop in my office and see me, or you can come up to his office up in Wilkes Barre, up in northeastern Pennsylvania, the coal mine region. That was about the extent of it.

Then a few more phone calls to me, just keeping me on the string, basically. The next thing I know, February 2, two FBI agents knocked on my door, told me they were investigating—they didn't tell me that. The first thing they asked me if I knew Mel Weinberg. Then they asked me some other questions, they were investigating a political corruption case and they wanted to talk to me.

So, once I had a very brief conversation with them, I told them, you know, I would have to talk to my lawyer at this point. I said, I don't know whether I should be answering questions, but if I can help you, I will. But they were not specific on any of the questions. They just hit me cold with do you know Tony Divito, Mel Weinberg, those kinds of questions, Angelo Errichetti and so forth. That is about the extent of the story.

Mr. Cacheris. Mr. Chairman, I think the committee ought to be aware that the January 24 tape, which I don't know whether you viewed——

The Chairman. We haven't viewed it yet.

Mr. Cacheris. That is a tape that the judge, given the nature of the conversations on it, which were 90 percent local matters not involving official acts of the U.S. Congressman, in which there was a far-ranging discussion by the agents who admittedly were investigating the City Council of Philadelphia, again not involving the official acts of Mr. Myers as a Congressman, ruled that that tape should be stricken as an overt act in the conspiracy count in the indictment, left it in evidence only for the jury's consideration on Mr. Myers' state of mind as of August 22.

So, as you will see, it does discuss local nonofficial acts of the Congressman.

The Chairman. All right.

Do you have something?

Mr. Prettyman. Just a few questions, Mr. Chairman.

Mr. Congressman, you testified in your own behalf at your trial?

Mr. Myers. Yes, I did.

Mr. Prettyman. You were asked questions both by Mr. Cacheris, by other defense counsel and by the prosecutor?

Mr. Myers. Yes.

Mr. Prettyman. You testified for I believe over 350 pages of transcript of record?

Mr. Myers. I don't know the number, but it was a day and a half on the stand.

Mr. Prettyman. Other than the incident involving Congressman Musto, which you have told us about here, where you brought the Congressman to the sheik's representatives, did you tell essentially the same story at your trial that you told here today?

Mr. MYERS. No, I did not.

Mr. PRETTYMAN. What elements did you tell here today that you did not reveal at your trial, putting aside the incident involving Congressman Musto?

Mr. MYERS. Putting aside the Musto tape, I don't think anything.

Mr. PRETTYMAN. In other words, you told essentially the story here today that you told in greater detail at your trial?

Mr. MYERS. Yes, I would say that I did, yes, sir.

Mr. PRETTYMAN. And you were found guilty by a jury of bribery?

Mr. MYERS. Yes.

Mr. PRETTYMAN. Conspiracy, and a violation of the Travel Act?

Mr. MYERS. Yes.

Mr. PRETTYMAN. Is it your contention, sir, that you did not seek from the sheik's representatives the additional $50,000 over and above the original $50,000 that you received?

Mr. MYERS. Well, it is my contention that they kept insisting upon me taking additional money, which I never took. But at one point, near the end of that lengthy tape, the meeting of the 24th I think it was of January, near the end of that tape he said to me, you don't have to be bashful, we want to give you some additional money, give me a figure, I don't care what it is, we have got plenty.

At that point in time I said, well, throw another $50,000 in there, which of course I said at that time, I didn't get. You know, that was on the local issues. As a matter of fact, he spelled out that the $50,000 was to be used for me interceding with the Mafia, City Council, and the Port.

Now, I think he also included zoning in that area, which were all local issues that he talked about that additional $50,000.

Mr. PRETTYMAN. I would simply call the committee's attention to Exhibit 7(a), pages 161 and 162, which follows transcript 2549 in the bound volume which is before you on that issue.

I have no further questions, sir.

The **CHAIRMAN.** What page number was that?

Mr. PRETTYMAN. Look at 2549, Exhibit 7 starts at pages 161 and 162. I might just add in regard to that, one further question.

Who raised the issue of the additional $50,000 in subsequent telephone conversations between you and Mr. Wald?

Mr. MYERS. Well, they called me. I never called them.

Mr. PRETTYMAN. My question was who raised the issue of the additional money?

Mr. MYERS. I believe they did. They said to me—there is about five, I think four or five telephone conversations. Mr. Wald said to me, I have got to see you about other matters. I took that to mean that he wanted to see me about this additional moneys that he had spoken about. I would say that he raised them.

Mr. PRETTYMAN. I would call the committee's attention to those telephone conversations after the Congressman has concluded.

That is all I have, Mr. Chairman.

The **CHAIRMAN.** Does anyone have any questions they would like to ask?

Mr. **Thomas**. Congressman, are you aware of what Federal states as a maximum contribution from the individual or an individual constituted as a major donor under the law for campaign contribution for a member running for Congress?

Mr. **Myers**. Yes.

Mr. **Thomas**. How much are they?

Mr. **Myers**. Well, from an individual $1,000 and $5,000 limit from a committee.

The **Chairman**. Any other questions? If there are no other questions, we will excuse Mr. Myers, and we will discuss the matter.

[APPENDIX 2 TO REPORT OF SPECIAL COUNSEL UPON COMPLETION OF PRELIMINARY INQUIRY]

Myers' Hearing Exhibit A

IV

96TH CONGRESS
2D SESSION

H. RES. 608

Authorizing an investigation and inquiry by the Committee on Standards of Official Conduct.

IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 1980

Mr. BENNETT (for himself, Mr. SPENCE, Mr. HAMILTON, Mr. HOLLENBECK, Mr. PREYER, Mr. LIVINGSTON, Mr. SLACK, Mr. THOMAS, Mr. FOWLER, Mr. SENSENBRENNER, Mr. STOKES, and Mr. CHENEY) submitted the following resolution; which was referred to the Committee on Rules

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RESOLUTION

Authorizing an investigation and inquiry by the Committee on Standards of Official Conduct.

Whereas rule XLIII of the Rules of the House of Representatives sets forth the Code of Official Conduct for Members, officers, and employees of the House of Representatives and, among other things, prohibits the acceptance of gifts, directly or indirectly, from foreign nationals or their agents or from any person having a direct interest in legislation before the Congress or the acceptance of compensation from any source for the exertion of improper influence, and provides that all such Members, officers, and employees shall conduct themselves at all times in a manner which shall reflect creditably on the House of Representatives; and

Whereas Federal law prohibits the receipt of anything of value by any Member of Congress to influence his performance of his official duties or to reward or compensate him, other than as provided for by law, for the performance of those duties (18 U.S.C. 201, 203); prohibits the receipt of unauthorized fees relating to naturalization or citizenship (18 U.S.C. 1422); and prohibits conspiracy to commit any offense against the United States (18 U.S.C. 371); and

Whereas information has come to the attention of the House of Representatives alleging that certain Members of the House of Representatives have improperly accepted or agreed to accept money from undercover Federal agents and others in the course of an investigation initiated and/or conducted by the Federal Bureau of Investigation; and

Whereas clause 4(e)(1) of rule X of the Rules of the House of Representatives entrusts the Committee on Standards of Official Conduct with the authority (1) to recommend to the House of Representatives from time to time such administrative actions as it may deem appropriate to establish or enforce standards of official conduct for Members, officers, and employees of the House of Representatives, (2) to investigate any alleged violation, by a Member, officer, or employee of the House of Representatives, of the Code of Official Conduct or of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his duties or the discharge of his responsibilities and, after notice and hearing, to recommend to the House of Representatives, by resolution or otherwise, such action as the committee may deem appropriate in the circumstances, and

(3) to report to the appropriate Federal or State authorities, with the approval of the House of Representatives, any substantial evidence of a violation by a Member, officer, or employee of the House of Representatives of any law applicable to the performance of his duties or the discharge of his responsibilities, which may have been disclosed in a committee investigation: Now, therefore, be it

Resolved, That the Committee on Standards of Official Conduct be and it is hereby authorized and directed to conduct a full and complete inquiry and investigation of alleged improper conduct which has been the subject of recent investigations (commonly referred to as ABSCAM) by the Department of Justice, including the Federal Bureau of Investigation, to determine whether Members, officers, or employees of the House of Representatives have violated the Code of Official Conduct or any law, rule, regulation or other applicable standard of conduct. The scope of the inquiry and investigation may be expanded by the committee to extend to any matters relevant to discharging its responsibilities pursuant to this resolution or the Rules of the House of Representatives.

SEC. 2. The committee may report to the House of Representatives any findings, conclusions, and recommendations it deems proper with respect to the adequacy of the present Code of Official Conduct or the Federal laws, rules, regulations, and other standards of conduct applicable to the conduct of Members of the House of Representatives in the performance of their duties and the discharge of their responsibilities.

SEC. 3. The committee, after appropriate notice and hearing, shall report to the House of Representatives its recommendations as to such disciplinary action, if any, that the committee deems appropriate by the House of Representatives and may provide such other reports of the results of its inquiry and investigation as the committee deems appropriate.

SEC. 4. (a) For the purpose of conducting any inquiry or investigation pursuant to this resolution, the committee is authorized to request or compel—

(1) by subpena or otherwise—

(A) the attendance and testimony of any person—

(i) at a hearing; or

(ii) at the taking of a deposition by one or more members of the committee; and

(B) the production of things of any kind, including, but not limited to, books, records, correspondence, logs, journals, memorandums, papers, documents, writings, graphs, charts, photographs, reproductions, recordings, tapes (including audiotapes and videotapes), transcripts, printouts, data compilations from which information can be obtained (translated, if necessary, into reasonably usable form), and other tangible objects; and

(2) by interrogatory, the furnishing under oath of such information as it deems necessary to such inquiry or investigation.

(b) A subpena for the taking of a deposition or the production of things may be returnable at such places and times as the committee may direct.

(c) The authority conferred on the committee by subsections (a) and (b) of this section may be exercised—

(1) by the chairman and the ranking minority member acting jointly, or, if either declines to or is unable to act, by the other acting alone, except that in the event either so declines or is unable to act, either shall have the right to refer to the committee for decision the question whether such authority shall be so exercised, and the committee shall be convened as soon as practicable to render that decision; or

(2) by the committee acting as a whole.

(d) Subpenas and interrogatories authorized under this section may be issued over the signature of the chairman, or ranking minority member, or any member designated by either of them. A subpena may be served by any person designated by either of them and may be served either within or without the United States on any national or resident of the

United States or any other person subject to the jurisdiction of the United States.

(e) In connection with any inquiry or investigation pursuant to this resolution, the committee may request the Secretary of State to transmit a letter rogatory or request to a foreign tribunal, officer, or agency.

(f) Any member of the committee or any other person authorized by law to administer oaths may administer oaths pursuant to this resolution.

(g) All testimony taken by deposition or things produced by deposition or otherwise, or information furnished by interrogatory pursuant to this section, other than at a hearing, shall be deemed to have been taken, produced, or furnished in executive session.

SEC. 5. For the purpose of conducting any inquiry or investigation pursuant to this resolution, the committee is authorized to sit and act, without regard to clause 2(m) of rule XI of the Rules of the House of Representatives, at such times and places within or without the United States, whether the House is meeting, has recessed, or has adjourned, and to hold such hearings as it deems necessary.

SEC. 6. The committee is authorized to coordinate its investigation with the Department of Justice and to enter into any agreements with that Department which the committee determines to be essential for the prompt and orderly performance of its duties: *Provided*, That such agreements shall not be inconsistent with applicable law or with any Rule of the House of Representatives unless otherwise provided herein for the purpose of this investigation. Without regard to clause 2(e)(2) of rule XI of the Rules of the House of Representatives, the committee may restrict access to information received from the Department of Justice to such members of the committee or other persons as the committee may designate.

SEC. 7. The committee is authorized to seek to participate and to participate, by special counsel appointed by the committee, on behalf of the committee and the House of Representatives in any judicial proceeding concerning or relating in any way to any inquiry or investigation conducted pursuant to this resolution, including proceedings to enforce a subpena.

SEC. 8. The authority conferred by this resolution is in addition to, and not in lieu of, the authority conferred upon the committee by the Rules of the House of Representatives. In conducting any inquiry or investigation pursuant to this resolution, the committee is authorized to adopt special rules of procedure as may be appropriate.

SEC. 9. Any funds made available to the committee after the adoption of this resolution may be expended for the purpose of carrying out the inquiry and investigation authorized and directed by this resolution.

Myers' Hearing Exhibit B

RESOLUTION

Whereas, on August 30, 1980, Representative Michael O. Myers was convicted in the United States District Court for the Eastern District of New York of criminal violations of the following sections of the United States Code:

(Count I) -- Title 18 United States Code
§ 371 [conspiracy]

(Count II) -- Title 18 United States Code
§ 201(c) [bribery]

(Count III) -- Title 18 United States Code
§ 1952 ["Travel Act"]

And Whereas, under federal law, each of the foregoing criminal offenses is punishable by a term of imprisonment of at least one year;

Now therefore be it Resolved, in accordance with Rule 14 of the Rules of this Committee, that this Committee conduct a preliminary inquiry pursuant to Rule 11(a) to review the evidence of the foregoing offenses and to determine whether they constitute violations over which the Committee is given jurisdiction under clause 4(e) of Rule X of the Rules of the House of Representatives;

And be it further Resolved, that Representative Myers and his counsel be immediately notified of this action and informed of the Member's rights pursuant to the Rules of this Committee.

Myers' Hearing Exhibit C

NINETY-SIXTH CONGRESS

CHARLES E. BENNETT, FLA., CHAIRMAN
LEE H. HAMILTON, IND.
RICHARDSON PREYER, N.C.
WYCHE FOWLER, JR., GA.
LOUIS STOKES, OHIO
NICK JOE RAHALL II, W. VA.

INQUIRY AND INVESTIGATION PURSUANT TO H. RES. 608

U.S. House of Representatives
COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT
Washington, D.C. 20515

FLOYD D. SPENCE, S.C.
HAROLD C. HOLLENBECK, N.J.
ROBERT L. LIVINGSTON, LA.
WILLIAM M. THOMAS, CALIF.
F. JAMES SENSENBRENNER, JR., WIS.
RICHARD B. CHENEY, WYO.

JOHN M. SWANNER, STAFF DIRECTOR
E. BARRETT PRETTYMAN, JR.,
SPECIAL COUNSEL

202/331-4685

September 3, 1980

BY HAND

The Honorable Michael O. Myers
U.S. House of Representatives
1217 Longworth House Office Building
Washington, D.C. 20515

Dear Representative Myers:

This is to inform you that on September 3, the House Committee on Standards of Official Conduct ("the Committee") passed the attached Resolution authorizing a preliminary inquiry into the matters for which you were recently convicted in the United States District Court for the Eastern District of New York.

Pursuant to Rule 11 of the Committee's Rules, you have the right to present an oral or written statement to the Committee during its preliminary inquiry. A complete set of the Committee's Rules is attached for your information.

If you wish to present a written statement, it must be received by the undersigned by Noon, September 10, 1980. If you wish to appear before the Committee to present oral testimony under oath, you must so inform the undersigned within three days of the date of this letter, and a Committee hearing will be scheduled for 2:00 P.M. on September 10, 1980, for the purpose of receiving that testimony. Failure to respond within these time limits will be deemed a waiver of your rights to present a statement during the preliminary inquiry.

Sincerely yours,

E Barrett Prettyman Jr

E. Barrett Prettyman, Jr.
Special Counsel

cc: Plato Cacheris, Esq.

Myers' Hearing Exhibit D

NINETY-SIXTH CONGRESS

CHARLES E. BENNETT, FLA., CHAIRMAN
LEE H. HAMILTON, IND.
RICHARDSON PREYER, N.C.
WYCHE FOWLER, JR., GA.
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INQUIRY AND INVESTIGATION PURSUANT TO H. RES. 608

U.S. House of Representatives
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JOHN M. SWANNER, STAFF DIRECTOR
E. BARRETT PRETTYMAN, JR.,
SPECIAL COUNSEL

202/331-4685

September 3, 1980

BY HAND

Plato Cacheris, Esquire
1709 New York Avenue, N.W.
Washington, D.C.

Re: Congressman Michael O. Myers

Dear Plato:

I understand that you will be representing Congressman Michael O. Myers in connection with the proceedings recently initiated by the House Committee on Standards of Official Conduct. I am enclosing for your information a letter which was sent to Congressman Myers concerning this matter.

In connection with the report of Special Counsel at the conclusion of the preliminary inquiry, as provided for by Rule 11(a) of the Committee's Rules, we are currently planning to attach to that report, and to make part of the record in these proceedings, substantial excerpts from the record of the trial of Congressman Myers in the United States District Court for the Eastern District of New York. Available in my office for immediate inspection is a copy of the transcript of that trial, with a line drawn in the left margin opposite those portions of the transcript which we believe irrelevant for the Committee's purposes (e.g., bench conferences concerning peripheral legal arguments), and which we therefore intend to delete from the version of the transcript to be submitted to the Committee. In addition to the pages so marked, we also intend to delete all of pages 1 through 589, 1420 through 1528, and 3578 through 3638. Finally, we intend to introduce the following trial exhibits: 1, 1A, 2, 2A, 3, 3A, 4, 4A, 5, 5A, 6, 6A, 7, 7A, 7C, 8, 8A, 9, 9A, 10, 10A-1, 19, 19A, 20, 20A, 21, 21A, 22, 22A, 23, 23A, 24, 24A, 25, and 25A.

If you wish to suggest any additions or deletions to the excerpts of the transcript and exhibits which we are proposing to submit to the Committee, please inform us specifically of your proposals by Noon, September 8, 1980, so that your suggestions may be appropriately considered.

Sincerely yours,

Barrett

E. Barrett Prettyman, Jr.
Special Counsel

Myers' Hearing Exhibit E

LAW OFFICES
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HENRY E. PETERSEN
LARRY S. GONDELMAN

VIRGINIA OFFICE
128 N. PITT STREET
ALEXANDRIA, VIRGINIA 22314
(703) 549-1158

September 8, 1980

E. Barrett Prettyman, Jr., Esq.
Special Counsel
U.S. House of Representatives
Committee on Standards of
Official Conduct
Washington, D.C. 20515

Dear Barrett:

This will confirm that my client, Michael J. Myers, wishes to appear before the House Committee on Standards of Official Conduct on September 10, 1980 at 2 p.m. in Room 2360 of the Rayburn House Office Building.

Sincerely,

Plato Cacheris

PC/pb

Myers' Hearing Exhibit F

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

IN RE REPRESENTATIVE MICHAEL O. MYERS)
) Investigation Pursuant To
) House Resolution 608

STIPULATION

It is hereby stipulated by and between Special Counsel for the Committee on Standards of Official Conduct of the House of Representatives ("the Committee") and counsel for Representative Michael O. Myers that for purposes of the above-entitled investigation:

1. The transcript of the trial docketed as Number 80 Cr. 00249 in the United States District Court for the Eastern District of New York ("the trial"), now in the possession of Special Counsel, shall be deemed a true and accurate copy of the original trial transcript, so that a certified copy of the original trial transcript need not be made a part of the Committee records.

2. The videotapes and audio tapes which are now in the possession of Special Counsel, the originals of which were introduced at the trial as Exhibits 1 through 10 and 19 through 25, shall be deemed true and accurate copies of the original tapes, so that a witness need not authenticate the tapes now in the possession of Special Counsel for purposes of admission into the Committee records.

3. The transcripts of videotapes and audio tapes which are now in the possession of Special Counsel, the originals of which were introduced at the trial as Exhibits 1A through 10A-1 and, 19A through 25A, shall be deemed true and accurate copies of the original trial transcripts, so that certified copies of the original trial transcripts need not be made a part of the Committee records.

4. The copies of trial Exhibits T-1 through T-10, which are now in the possession of Special Counsel, shall be deemed true and accurate copies of the originals of such exhibits, so that certified copies of the original exhibits need not be made a part of the Committee records.

5. Those portions of the trial transcript, and the exhibits recited above, which have been designated by Special Counsel and cross-designated by counsel for Congressman Myers, shall be deemed the only portions of the trial record which will be considered relevant and material to the Committee's investigation, *provided*, however, that by so stipulating, neither Special Counsel nor counsel for Congressman Myers concedes that all such portions are necessarily relevant and material to such investigation.

Plato Cacheris
Plato Cacheris
Counsel for Representative Myers

E Barrett Prettyman Jr
E. Barrett Prettyman, Jr.
Special Counsel to the Committee

September 8, 1980

Myers' Hearing Exhibit G

INQUIRY AND INVESTIGATION PURSUANT TO H. RES. [illegible]
U.S. House of Representatives
COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT
Washington, D.C. 20515

September 8, 1980

Plato Cacheris, Esq.
1709 New York Avenue, N.W.
Washington, D.C.

Dear Plato:

This is to confirm that your associate, Mr. Gondelman, requested this morning that we omit from the Committee's record in the Myers case Exhibit T-5, which you had earlier requested that we include. We are happy to accommodate you in this regard, and our earlier stipulation should be considered modified accordingly.

Sincerely yours,

Barrett

E. Barrett Prettyman, Jr.
Special Counsel

lmh

Myers' Hearing Exhibit H

LAW OFFICES
HUNDLEY & CACHERIS, P. C.
SUITE 205
1709 NEW YORK AVENUE, N. W.
WASHINGTON, D. C. 20006
(202) 783-4430

WILLIAM G. HUNDLEY
PLATO CACHERIS
HENRY E. PETERSEN

LARRY S. GONDELMAN

VIRGINIA OFFICE
128 N. PITT STREET
ALEXANDRIA, VIRGINIA 22314
(703) 549-1188

September 11, 1980

E. Barrett Prettyman, Jr., Esq.
Special Counsel
Committee on Standards of
Official Conduct
U.S. House of Representatives
Washington, D.C. 20515

Re: Congressman Michael J. Myers

Dear Mr. Prettyman:

Please consider this letter as a formalization of my oral motion made at the hearing yesterday.

I request that the Committee keep phase one of its hearings open for the purpose of permitting Congressman Myers to supplement the record with testimony, transcripts and exhibits concerning the violation of Congressman Myers' due process rights in the investigation of this case.

As I stated at the hearing yesterday and repeat here, Federal Judge Pratt, before whom this matter is pending, has ruled that a due process hearing for Mr. Myers is warranted. The Myers case will not be complete until Judge Pratt holds this hearing and rules on this Constitutional issue.

I assure you that the delay in this due process hearing is in no way attributable to Congressman Myers. A motion for a due process hearing was made well in advance of trial, but the Judge decided that the hearing should take place subsequent to trial since it was not a jury issue.

This issue is of vital concern to Congressman Myers and I suggest should be of concern to your Committee since it deals with the integrity of the prosecution.

Sincerely,

Plato Cacheris

PC/pb

cc: Hon. Michael J. Myers

Myers' Hearing Exhibit I

NINETY-SIXTH CONGRESS

CHARLES E. BENNETT, FLA., CHAIRMAN
LEE H. HAMILTON, IND.
RICHARDSON PREYER, N.C.
JOHN M. SLACK, W. VA.
MORGAN MURPHY, ILL.
JOHN P. MURTHA, PA.

FLOYD D. SPENCE, S.C.
HAROLD C. HOLLENBECK, N.J.
BOB LIVINGSTON, LA.
WILLIAM M. THOMAS, CALIF.
F. JAMES SENSENBRENNER, JR., WIS.
RICHARD B. CHENEY, WYO.

JOHN M. SWANNER, STAFF DIRECTOR

U.S. House of Representatives
COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT
Washington, D.C. 20515

PERSONAL & CONFIDENTIAL
BY HAND

February 22, 1980

The Honorable Michael O. Myers
House of Representatives
1217 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Myers:

I am writing as special counsel to, and at the direction of, the House Committee on Standards of Official Conduct.

Recent extensive press reports have indicated that you are one of several members of the House who may be under investigation by the Department of Justice for allegedly agreeing to accept improper payments offered as part of an operation initiated by the Federal Bureau of Investigation. The staff of the House Committee on Standards of Official Conduct is now assembling evidence, pursuant to Committee Rule 13, on the basis of which the Committee will determine whether it should initiate a preliminary inquiry into this matter, pursuant to Committee Rule 11.

In the interests of fairness, before making any determination regarding the necessity for a Rule 11 inquiry, the Committee wishes to afford you the opportunity to appear voluntarily before it -- either in open or executive session -- to testify under oath in order to present to the Committee and its staff whatever information you deem pertinent to these matters. You may be accompanied by counsel of your choice.

Because the Committee hopes to proceed expeditiously with regard to this matter, I would appreciate your informing me no later than Friday, February 29, 1980, whether you wish to avail yourself of this opportunity.

Sincerely,

E. Barrett Prettyman, Jr.
Special Counsel

Myers' Hearing Exhibit J

LAW OFFICES
HUNDLEY & CACHERIS, P. C.
SUITE 205
1709 NEW YORK AVENUE, N. W.
WASHINGTON, D. C. 20006
(202) 833-3183

WILLIAM G. HUNDLEY
PLATO CACHERIS
HENRY E. PETERSEN

LARRY S. GONDELMAN

VIRGINIA OFFICE
128 N. PITT STREET
ALEXANDRIA, VIRGINIA 22314
(703) 549-1188

PERSONAL & CONFIDENTIAL
BY HAND

February 26, 1980

E. Barrett Prettyman, Jr., Esq.
Special Counsel
U.S. House of Representatives
Committee on Standards of
  Official Conduct
Washington, D.C. 20515

Dear Barrett:

Your letter of February 22, 1980, to Congressman Michael O. Myers has been referred to me for response.

While Congressman Myers is sensitive to the prerogatives of the House Committee on Standards of Official Conduct, he is equally aware of the recent and rampant publicity by which the Department of Justice is suggesting that he may be in criminal jeopardy. In fact, your letter predicates a request for Mr. Myers' testimony on just such publicity.

Under these circumstances, Mr. Myers is adhering to my advice and will not appear before your committee at the present time.

Once the atmosphere clears, Mr. Myers will view your request from a different perspective, and at that time, may be of assistance to your committee.

Personal regards,

Plato

Plato Cacheris

PC/pb

Myers' Hearing Exhibit K

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JUN 3 1980 ★
TIME A.M.
P.M.

UNITED STATES OF AMERICA
- against -
MICHAEL O. MYERS, et al.
Defendants
Cr. No. 80-00249

UNITED STATES OF AMERICA
- against -
RAYMOND F. LEDERER, et al.
Defendants
Cr. No. 80-00253

UNITED STATES OF AMERICA
- against -
FRANK THOMPSON, JR., et al.
Defendants
Cr. No. 80-00291

ORDER PERMITTING DISCLOSURE OF GRAND JURY MATERIALS

The Committee on Standards of Officials Conduct of the United States House of Representatives ("the Committee") having requested access to certain information and materials constituting grand jury materials in the proceedings referenced above; and it appearing that the Committee has a compelling and particularized need for the information and materials which it has requested and that disclosure is essential to the ends of justice and the Constitutional duties of the Committee; and the United States Department of Justice having consented to such disclosure subject to certain conditions, it is hereby

ORDERED, pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure, that the Committee be and the same is hereby authorized to receive information and materials which are in the custody of the aforesaid grand jury or the Department of Justice and which the Department has agreed to disclose to the Committee for use in its investigation of the so-called "Abscam" allegations, excluding transcripts of grand jury testimony;

PROVIDED, that the information and materials disclosed to the Committee pursuant to this order shall not without the approval of this Court be subject to subpoena or other mandatory process initiated by any third party; and

PROVIDED FURTHER, that should the Committee determine that it is necessary, in the performance of its Constitutional duties in connection with its investigation, to disclose any such information or materials to the public or to any third party, the Committee shall give ten (10) days' advance notice of such disclosure to the Department of Justice.

Dated: Bklyn
July 11, 1980

Jacob Mishler
UNITED STATES DISTRICT JUDGE

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Myers' Hearing Exhibit L

NINETY-SIXTH CONGRESS

CHARLES E. BENNETT, FLA., CHAIRMAN
LEE H. HAMILTON, IND.
RICHARDSON PREYER, N.C.
WYCHE FOWLER, JR., GA.
LOUIS STOKES, OHIO
NICK JOE RAHALL II, W. VA.

INQUIRY AND INVESTIGATION PURSUANT TO H. RES. 608

U.S. House of Representatives
COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT
Washington, D.C. 20515

FLOYD D. SPENCE, S.C.
HAROLD C. HOLLENBECK, N.J.
ROBERT L. LIVINGSTON, LA.
WILLIAM M. THOMAS, CALIF.
F. JAMES SENSENBRENNER, JR., WIS.
RICHARD B. CHENEY, WYO.

JOHN M. SWANNER, STAFF DIRECTOR
E. BARRETT PRETTYMAN, JR.,
SPECIAL COUNSEL

September 3, 1980

The Honorable Irwin B. Nathan
2113 Main Justice Building
Department of Justice
Washington, D.C. 20530

Dear Mr. Nathan:

You will recall that in the order signed by Judge Mishler on July 11, 1980, he directed me, as Special Counsel to the House Committee on Standards of Official Conduct, to give the Department of Justice ten days' notice prior to making a public disclosure of materials which had been previously given to the Grand Jury. I assume that this request has been mooted to the extent that certain tapes, and the transcripts of those tapes, were shown or released to the public during the trial itself.

However, I want to make clear, in view of the order entered by the Second Circuit Court of Appeals, that the Committee does not at this time intend to give any videotapes or oral tapes to the media or to the public. Rather, the Committee may introduce as part of its record some or all of the tapes, and the transcripts of those tapes, which were introduced at trial and which therefore are already part of the public record.

Sincerely,

E. Barrett Prettyman, Jr.
Special Counsel

Myers' Hearing Exhibit M

NINETY-SIXTH CONGRESS
CHARLES E. BENNETT, FLA., CHAIRMAN
LEE H. HAMILTON, IND.
RICHARDSON PREYER, N.C.
WYCHE FOWLER, JR., GA.
LOUIS STOKES, OHIO
NICK JOE RAHALL, II, W. VA.

INQUIRY AND INVESTIGATION PURSUANT TO H. RES. 608

U.S. House of Representatives
COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT
Washington, D.C. 20515

FLOYD D. SPENCE, S.C.
HAROLD C. HOLLENBECK, N.J.
ROBERT L. LIVINGSTON, LA.
WILLIAM M. THOMAS, CALIF.
F. JAMES SENSENBRENNER, JR., WIS.
RICHARD B. CHENEY, WYO.

JOHN M. SWANNER, STAFF DIRECTOR
E. BARRETT PRETTYMAN, JR.,
SPECIAL COUNSEL

September 3, 1980

Plato Cacheris, Esq.
1709 New York Avenue, N.W.
Washington, D.C.

Dear Mr. Cacheris:

You will recall that during the discussion before Judge Mishler on July 11, 1969, he orally requested me, as Special Counsel for the House Committee on Standards of Official Conduct, to give the counsel for the defendants in the Myers trial ten days' advance notice prior to making a public disclosure of materials which had been previously given to the Grand Jury. I assume that this request has been mooted to the extent that certain tapes, and the transcripts of those tapes, were shown or released to the public during the trial itself.

However, I want to make clear, in view of the order entered by the Second Circuit Court of Appeals, that the Committee does not at this time intend to give any videotapes or oral tapes to the media or to the public. Rather, the Committee may introduce as part of its record some or all of the tapes, and the transcripts of those tapes, which were introduced at trial and which therefore are already part of the public record.

Sincerely,

E. Barrett Prettyman, Jr.

E. Barrett Prettyman, Jr.
Special Counsel

Myers' Hearing Exhibit N

NINETY-SIXTH CONGRESS

CHARLES E. BENNETT, FLA., CHAIRMAN
LEE H. HAMILTON, IND.
RICHARDSON PREYER, N.C.
WYCHE FOWLER, JR., GA.
LOUIS STOKES, OHIO
NICK JOE RAHALL II, W. VA.

INQUIRY AND INVESTIGATION PURSUANT TO H. RES. 608

U.S. House of Representatives
COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT
Washington, D.C. 20515

FLOYD D. SPENCE, S.C.
HAROLD C. HOLLENBECK, N.J.
ROBERT L. LIVINGSTON, LA.
WILLIAM M. THOMAS, CALIF.
F. JAMES SENSENBRENNER, JR., WIS.
RICHARD B. CHENEY, WYO.

JOHN M. SWANNER, STAFF DIRECTOR
E. BARRETT PRETTYMAN, JR.,
SPECIAL COUNSEL

202/331-4685

September 16, 1980

Plato Cacheris, Esquire
1709 New York Avenue, N.W.
Washington, D.C. 20006

Re: Representative Michael O. Myers --
Investigation Pursuant to House
Resolution 608

Dear Plato:

This will confirm and supplement our telephone conversation this morning.

Enclosed are two Resolutions which the Committee on Standards of Official Conduct adopted at its meeting this morning by unanimous vote of those present. (The votes are available for inspection at the Committee's offices.)

The first Resolution denies your motion to keep open the Preliminary Inquiry stage of the Committee's proceedings pending resolution of Representative Myers' due process claims. The second Resolution provides that the Committee shall proceed promptly to hold a disciplinary hearing for the sole purpose of determining what sanction to recommend that the House of Representatives impose on Representative Myers for the offenses referred to in the Resolution, and further provides that you and Representative Myers shall promptly be advised of this action and informed of the Congressman's rights pursuant to the Rules of this Committee.

You have already been given a copy of the Committee's Rules. Rules 14, 16, 17 and 18 are particularly relevant to the second phase of the disciplinary hearing that is now beginning. As reflected in the second Resolution, the scope and purpose of the second phase of the disciplinary hearing are solely to determine what sanction, if any, to recommend that the House of Representatives adopt in regard to Representative Myers.

The Committee has instructed me to tell you that it will hold a second-phase hearing next Wednesday, September 24, 1980, at 9:30 AM in Room 2359 of the Rayburn House Office Building. If you intend to call any witnesses to appear and testify on behalf of Representative Myers, you are required to submit a list of those witnesses to me by this Friday, September 19. If the list contains numerous witnesses, the Committee has the option of declining to hear some or all of them (see Rule 1[illegible](f)), or of hearing some or all of them prior to next Wednesday's hearing. If the list is short, the witnesses will probably all be heard on September 24. If you intend to submit any evidence in writing, this submission must be made by noon, Monday, September 22. I have been instructed to tell you that barring extraordinary circumstances, the Committee intends to complete the second phase of its disciplinary hearing next Wednesday, September 24. At the end of the hearing, you and I will each be given 30 minutes to state our respective positions in regard to what sanction, if any, is appropriate under the circumstances.

If you have any questions, please do not hesitate to call or write me.

Sincerely yours,

Barrett

E. Barrett Prettyman, Jr.
Special Counsel

EBP:mda
encl.

Myers' Hearing Exhibit
O

NINETY-SIXTH CONGRESS

CHARLES E. BENNETT, FLA., CHAIRMAN
LEE H. HAMILTON, IND.
RICHARDSON PREYER, N.C.
WYCHE FOWLER, JR., GA.
LOUIS STOKES, OHIO
NICK JOE RAHALL II, W. VA.

INQUIRY AND INVESTIGATION PURSUANT TO H. RES. 608

U.S. House of Representatives
COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT
Washington, D.C. 20515

FLOYD D. SPENCE, S.C.
HAROLD C. HOLLENBECK, N.J.
ROBERT L. LIVINGSTON, LA.
WILLIAM M. THOMAS, CALIF.
F. JAMES SENSENBRENNER, JR., WIS.
RICHARD B. CHENEY, WYO.

JOHN M. SWANNER, STAFF DIRECTOR
E. BARRETT PRETTYMAN, JR.,
SPECIAL COUNSEL

202/331-4685

September 17, 1980

Plato Cacheris, Esquire
1709 New York Avenue, N.W.
Washington, D.C. 20006

Re: Representative Michael O. Myers --
Investigation Pursuant to House
Resolution 608

Dear Plato:

Out of a sense of fairness -- even though the Committee Rules do not require it -- the Committtee on Standards of Official Conduct would like you to see the Exhibits which were marked and received during the Preliminary Inquiry, as well as my Report. I must emphasize that these materials were received in Executive Session and therefore are not public and should not be distributed publicly. The Committee nevertheless felt that you should see them so that you would have a more complete understanding of what occurred during the Preliminary Inquiry, and as an aid to you in preparing for the second phase of the Inquiry.

As recited by the Resolution I sent you yesterday, my Report was neither the only nor even the controlling factor in the Committee's decision. On the contrary, the Committee reviewed the relevant trial evidence as stipulated by you and me, and reached its decision upon the entire record.

Sincerely yours,

Barrett

E. Barrett Prettyman, Jr.
Special Counsel

Myers' Hearing Exhibit P

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

In the Matter of)
)
Representative) Investigation Pursuant to
) House Resolution 608
MICHAEL O. MYERS)

RESOLUTION

Counsel for Representative Michael O. Myers in the above-entitled proceeding having moved that "the Committee keep phase one [the Preliminary Inquiry stage] of its hearings open for the purpose of permitting Congressman Myers to supplement the record with testimony, transcripts and exhibits concerning the violation of Congressman Myers' due process rights in the investigation of this case," and the Committee having heard argument by counsel for Representative Myers and by Special Counsel to the Committee; and the Committee having found that the due process arguments which have been made to the courts on behalf of the Congressman, even if accepted, do not impact upon or detract from the basic evidence reviewed by the Committee; and the Committee having previously determined that the term "convicted" in Rule 14 of the Committee's Rules means the entry of a guilty plea or the entry of a jury verdict of guilty; and the Committee having further found that Congressman Myers has failed to show cause for departing from that interpretation by deferring proceedings under the circumstances here, particularly in view of the impending Congressional adjournment; it is hereby:

RESOLVED, that the Motion on behalf of
Representative Myers to keep open the
Preliminary Inquiry is denied.

Myers' Hearing Exhibit Q

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

In the Matter of)
)
Representative) Investigation Pursuant to
) House Resolution 608
MICHAEL O. MYERS)

RESOLUTION

Pursuant to Rule 14 of the Committee's Rules, the Committee, having reviewed the evidence relating to the conviction of Representative Michael O. Myers in the United States District Court for the Eastern District of New York for the offenses of violating Sections 201(c), 371 and 1952 of Title 18 of the United States Code; and upon consideration of the Report of Special Counsel Upon Completion of Preliminary Inquiry filed September 10, 1980, in the above-captioned matter, and of all relevant evidence, including the exhibits and record herein and the statements submitted by Representative Michael O. Myers on September 10, 1980, now determines that such offenses were committed and constitute violations over which the Committee is given jurisdiction under Clause 4(e) of Rule X of the Rules of the House of Representatives, including House Rule XLIII, Clauses 1-3, and it is hereby:

Resolved, that the Committee shall proceed promptly to hold a disciplinary hearing for the sole purpose of determining what sanction to recommend that the House of Representatives impose on Representative Myers for these offenses;

And Be It Further Resolved, that Representative Myers and his counsel shall be promptly advised of this action and informed of the Member's rights pursuant to the Rules of this Committee.

Myers' Hearing Exhibit R

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

In the Matter of :
MICHAEL O. MYERS :

MOTION BY RESPONDENT MYERS FOR RECONSIDERATION OF MOTION TO DEFER PRELIMINARY INQUIRY, OR, IN THE ALTERNATIVE, TO DEFER DISCIPLINARY HEARING

The Committee on Standards of Official Conduct has determined to proceed promptly to hold a disciplinary hearing for the sole purpose of determining what sanction to recommend that the House of Representatives impose on Representative Myers as a result of a jury verdict of guilty for various offenses. In the course of this determination, the Committee denied a motion of Congressman Myers to keep open phase one of its hearings pending a resolution by the District Court for the Eastern District of New York of the allegation by Congressman Myers that the prosecution of him must be barred because the government violated his right to due process.

The Committee apparently based its denial of the motion on three factors: (1) even if the Court rules that the government's conduct in this case violated Congressman Myers' due process rights, that would not impact on the evidence reviewed by the Committee; (2) that the jury verdict of guilty constitutes a "conviction" within the meaning of Rule 14 of the Committee's Rules despite the fact that the due process issue has not yet been addressed by the trial court; and (3) that in view of the impending Congressional adjournment, Congressman Myers has failed to show cause for departing from that interpretation.

Congressman Myers and his codefendants raised the issue of due process violations pre-trial, contending that such violations mandated the dismissal of the indictment. The Court deferred the hearing on the due process issues until after the jury had rendered a verdict.[1] The hearing on this issue has not yet been held. Some facts relevant to this issue were established at trial. A substantial record on the issue was developed in connection with a related case in Philadelphia. However, there are still facts to be established in this case at the due process hearing.

The essence of the due process defense is that the nature and extent of the government involvement in the crime were so overreaching as to bar prosecution. United States v. Twigg, 588 F.2d 373, 377 (3d Cir. 1978). The Congressman has asserted before the district court that the criminal conduct alleged in the indictment was the product of government overreaching in that the acts were inextricably intertwined with a scheme initiated, planned, and executed by the Government.

The Courts have acknowledged a need for judicial sensitivity to the problems presented by such law enforcement activity.

> Infiltration of criminal operations by informers and undercover agents is an accepted and necessary practice. Yet, this court cannot 'shirk the responsibility that is necessarily in its keeping ... to accommodate the dangers of overzealous law enforcement and civilized methods adequate to counter the ingenuity of modern criminals.'

United States v. Twigg, supra, quoting Sherman v. United States, 356 U.S. 369, 381 (Frankfurter, J., concurring in result).

---

[1] The Court also rejected the defense contention that the due process defense should be submitted to the jury.

> Prosecutors and their agents naturally tend to assign great weight to the societal interest in apprehending and convicting criminals; the danger is that they will assign too little to the rights of citizens to be free from government-induced criminality.

United States v. Archer, 486 F.2d 670, 677 (2d Cir. 1973).

It is the position of Congressman Myers that the conduct of the government in this case was so outrageous that the government should have been precluded from bringing the charges against him. This issue has not yet been decided in the first instance by the trial judge. While the court decided that the issue should be resolved after the jury returned its verdict, that verdict remains, in a very real and significant sense, a contingent verdict. It was for this reason that counsel moved to keep open stage one of the disciplinary procedure. In actuality, there has been no conviction because the case has not yet been completed.

This position is supported by Rule 32(b)(1) of the Federal Rules of Criminal Procedure which clearly refers to a judgment of conviction as being entered after sentence is imposed.[2]

> [A] judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence.

See United States v. Lee, 509 F.2d 400, 405 (D.C. Cir. 1974); Thomas v. United States, 121 F.2d 905, 907 (D.C. Cir. 1941); Crawford v. United States, 41 F.2d 979, 980 (D.C. Cir. 1930). ("it takes the judgment of the court on the plea or verdict to constitute a conviction"). The distinction between verdict and conviction should not be ignored. Therefore, it is respectfully submitted that the Committee erred in finding that a jury verdict of guilty constitutes a conviction within the scope of Rule 14 of the Committee's Rules.

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[2] Of course, sentencing cannot take place until after the resolution of the due process issue.

This position is supported by the cases interpreting Rule 609 of the Federal Rules of Evidence. Rule 609 allows a party to attack the credibility of a witness with evidence that he or she has been convicted of a crime punishable by death or imprisonment in excess of one year or involving dishonesty or false statement. Several courts have faced the issue of whether a jury verdict of guilty upon which judgment has not been entered qualifies as a "conviction" for impeachment purposes. Although a number of courts have found that there is no distinction between a jury's finding of guilty and the entry of a judgment of conviction for impeachment purposes[3], the rationale of these decisions mandate a different conclusion in the circumstances of this case.

The most significant operative fact on which the courts rely in allowing impeachment by proof of a guilty verdict prior to judgment is that "the entry of judgment is usually 'nothing more than a ministerial act ...'". United States v. Vanderbosch, 610 F.2d 95, 97 (2d Cir. 1979). This is so because a verdict of guilty carries an assurance of finality.

> Because the judgment of a jury
> is favored in our law, a court
> may not lightly disturb a jury's
> verdict.

United States v. Klein, 560 F.2d 1236, 1241 (5th Cir. 1977).

In this case, there are significant issues to be resolved before the entry of judgment becomes purely ministerial. The pendency of these issues belies the finality of the jury's verdict. The trial of Congressman Myers is not yet complete. Apparently in recognition of this fact, the District for the Eastern District of New York has ordered that post-trial motions, normally due within seven days of the return of verdict, will be due within seven days of the decision by the court on the due process motions.[4] (A copy of that order is attached hereto as Exhibit 1). Under these circumstances, it is respectfully submitted that it is erroneous to treat the verdict of guilty as a conviction for purposes of Rule 14 of the Committee.

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[3] See United States v. Vanderbosch, 610 F.2d 95, 97 (2d Cir. 1979); United States v. Duncan, 598 F.2d 839, 864-65 (4th Cir. 1979); United States v. Klein, 560 F.2d 1236, 1239-41 (5th Cir. 1977); United States v. Rose, 526 F.2d 745, 746-47 (8th Cir. 1975).

Moreover, the suggestion by the Committee in its resolution that even if Congressman Myers' due process rights were violated, that fact would neither impact on nor detract from the evidence ignores the significance of such a finding. As Justice Powell observed in Hampton v. United States, 425 U.S. 484, 495 n. 7 (1976)(Powell, J., concurring),

> Police overinvolvement in crime would have to reach a demonstrable level of outrageousness before it could bar conviction.

Thus, a determination by the District Court that the government violated Congressman Myers' right to due process would necessarily include a finding of egregious government conduct. See United States v. Twigg, 588 F.2d 373, 381 (3d Cir. 1978)("This egregious conduct on the part of government agents generated new crimes by the defendant merely for the sake of pressing criminal charges against him when, as far as the record reveals, he was lawfully and peacefully minding his own affairs. Fundamental fairness does not permit us to countenance such actions by law enforcement officials and prosecution for a crime so fomented by them will be barred").

Congressman Myers' conduct cannot and should not be evaluated in a vacuum. If one of the circumstances surrounding his involvement is "outrageous" conduct by government agents, it is most certainly relevant to the sanction determination. To deny Congressman Myers the right to have his conduct evaluated in that light is to deny him his constitutional rights merely because he is a congressman. And to suggest that the impending adjournment of the House necessitates haste in this matter renders the opportunity to be heard a mockery.[5]

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[4] This order was made pursuant to a request by the defendant.

For the foregoing reasons, the Committee on Standards of Official Conduct should reconsider its denial of Congressman Myers' motion to keep open the preliminary inquiry. Alternatively, the Committee should defer the disciplinary hearing pending a resolution of the due process claims by the District Court for the Eastern District of New York.

Respectfully submitted,

PLATO CACHERIS

LARRY S. GONDELMAN

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[5] In this regard, it is important to note that Congressman Myers is in no way responsible for the delay in the due process hearing. It was his position throughout the trial that the due process issues should be explored and decided as quickly as possible.

EXHIBIT 1 PAGE 1 OF 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- x

UNITED STATES OF AMERICA DOCKET NO. CR 80-00249

- against -

MYERS et al.,

Defendants.

- x

UNITED STATES OF AMERICA DOCKET NO. CR 80-00253

- against -

LEDERER et al.,

Defendants.

- x

UNITED STATES OF AMERICA DOCKET NO. CR 80-00291

- against -

THOMPSON et al.,

Defendants.

- x

PRATT, J:

By letter dated September 7, 1980, counsel for defendants Criden and Johanson request additional time within which to file motions under FRCrP 33 for a new trial in United States v. Myers et al. The application for additional time is granted with respect to all defendants in all three actions to the extent that any motion under FRCrP 33 will be timely if made within 7 days following the disposi-

EXHIBIT 1 PAGE 2 OF 2

tion of that defendant's motion to dismiss an indictment on due process grounds.

SO ORDERED.

Dated: Westbury, New York
September 15, 1980.

George C. Pratt

GEORGE C. PRATT
U. S. DISTRICT JUDGE

Myers' Hearing Exhibit S

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

In the Matter of)
)
Representative) Investigation Pursuant to H. Res. 608
)
MICHAEL O. MYERS)

SPECIAL COUNSEL'S OPPOSITION TO MOTION BY RESPONDENT MYERS FOR RECONSIDERATION OF MOTION TO DEFER PRELIMINARY INQUIRY, OR, IN THE ALTERNATIVE, TO DEFER DISCIPLINARY HEARING

Respondent Michael O. Myers has filed with the Committee a Motion [*] seeking reconsideration by the Committee of its earlier decision not to defer its disciplinary proceedings in this matter. Respondent has shown no valid reason why the Committee should reconsider its decision, and Special Counsel respectfully urges the Committee to deny the instant Motion and to proceed on September 24, 1980, with the scheduled hearing in this case.

The Committee has, of course, already considered this matter at length. By resolution adopted on September 16, 1980, the Committee rejected Respondent's September 10 motion urging the Committee to defer proceeding pursuant to Rule 14, despite the jury's verdict of guilty against him, because a formal judgment of conviction has not yet been entered.

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[*] "Motion by Respondent Myers for Reconsideration of Motion to Defer Preliminary Inquiry, or, in the Alternative, to Defer Disciplinary Hearing," filed September 22, 1980 (hereinafter, "Resp. Motion").

In the instant Motion, Respondent relies on three basic arguments in seeking to have the Committee reconsider its decision: (1) Respondent argues that judicial precedents interpreting the term "conviction" support Respondent's assertion that he has not been "convicted" until entry of judgment; (2) Respondent contends that the conduct of the Department of Justice in investigating and prosecuting his case "was so outrageous that the Government should have been precluded from bringing the charges against him," Resp. Motion at 3, citing United States v. Twigg, 588 F.2d 373 (3rd Cir. 1978); and (3) Respondent argues that it is a denial of his rights for the Committee to proceed with a hearing that would exclude consideration of the allegedly "outrageous" conduct by Government agents in his case, which conduct, Respondent contends, "is most certainly relevant to the sanction determination." Resp. Motion at 6.

First, the judicial precedents relied upon by Respondent are totally inapposite. None of these decisions seeks to define the term as used in Rule 14 of this Committee's rules. There is simply no reason why this Committee, or the House of Representatives, when interpreting its own rules, should consider itself bound by interpretations placed by the courts on very different rules adopted for very different purposes.

Moreover, the cases cited by Respondent in fact support the Committee's interpretation. In each of those cases, */ the court concluded that a jury verdict of guilty in fact does constitute a "conviction" which may be used for impeachment under Federal Rule of Evidence 609, regardless of whether a judgment of conviction has been entered. The cases hold that such a verdict qualifies as a "conviction" even if all pending motions have not yet been ruled upon. For example, in United States v. Vanderbosch, supra, 610 F.2d at 96, use of a jury verdict to impeach the defendant was permitted, notwithstanding that the verdict had not been reduced to a judgment and that motions for a new trial and for acquittal were still pending. In United States v. Klein, supra, 560 F.2d at 1240, the court held that the pendency of a motion for a judgment of acquittal, of a motion for new trial, or of a motion in arrest of judgment would not preclude the use of a verdict for impeachment. Similarly, in United States v. Rose, supra, 526 F.2d at 747, the court held that the use of a jury verdict for impeachment would be proper, notwithstanding that motions for judgment notwithstanding the verdict and for a new trial had not been ruled upon.

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*/ See Resp. Motion at 4, citing United States v. Vanderbosch, 610 F.2d 95 (2d Cir. 1979); United States v. Duncan, 598 F.2d 839 (4th Cir. 1979); United States v. Klein, 560 F.2d 1236 (5th Cir. 1977); United States v. Rose, 526 F.2d 745 (8th Cir. 1975).

In none of these cases did the court feel it necessary to inquire into the merits of the pending motions. Each stated only that use of the jury's verdict for impeachment would be proper, notwithstanding the motions, so long as the defendant had the opportunity to explain the legal status of the conviction. Consequently, the cases provide no support for Representative Myers' argument that the guilty verdict in his trial may not be considered a "conviction" under Rule 14 until his motion to dismiss has been resolved.

Respondent's second main argument is that the Committee should defer further proceedings because he still has pending before the District Court a motion, based upon the Twigg case, seeking to dismiss the charges against him due to alleged governmental misconduct. As the Committee already has found in its September 16 Resolution, these Twigg issues simply "do not impact upon or detract from the basic evidence reviewed by the Committee." Even assuming, hypothetically, */ that Respondent

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*/ It should be emphasized, however, that after reviewing all the evidence that Representative Myers presented to the District Court and to this Committee, Special Counsel has no basis for assuming that the Twigg argument will be successful. The United States Supreme Court has not adopted the rather extreme Twigg approach to due process analyses. See Hampton v. United States, 425 U.S. 484 (1976). In fact, the Twigg case itself suggests that even "extreme methods of investigation" are permissible in investigating "fleeting and elusive" crimes which are difficult to detect. United States v. Twigg, supra, 588 F.2d at 378. The United States Court of Appeals for the Second Circuit, which will

[Footnote Continued]

ultimately prevails in court on his Twigg arguments, the evidence already viewed by this Committee nevertheless justifies any recommendation as to sanction the Committee may decide upon. Under Twigg, a criminal prosecution is barred where the conduct of the Department of Justice in investigating and prosecuting a criminal case is so outrageous as to offend traditional notions of due process of law. Even in such a case, however, nothing in Twigg purports to, or can, limit the power of a House of Congress to proceed with a disciplinary hearing based upon the same or related matters, if the House deems it appropriate.

In the instant case, Representative Myers has admitted going to a meeting to which he had been invited by a long-time friend and at which he knew he would be tendered a substantial sum of money. He knew before he ever met anyone in the Federal Government that he would have to make promises connected with his Congressional duties in order to receive the money. He has admitted that at that meeting he promised */ to use his congressional influence in exchange for the money he was to be given.

[Footnote Continued]

be hearing Respondent's appeal, has suggested that bribery may be just such an elusive crime justifying the type of governmental tactics at issue here. See United States v. Rosner, 485 F.2d 1213, 1223 (2d Cir. 1973).

*/ Respondent contends that at the time he made this promise he did not intend to fulfill it; he admits, however, that he made the promise in order to receive the offered sum of money.

He also has admitted that he in fact received the money. Special Counsel submits that these and the many other admissions made by Representative Myers during his testimony before the Committee, as well as his testimony at trial, provide an ample basis upon which this Committee should proceed to sanction Representative Myers even if the courts ultimately might hold that some Government misconduct were to prevent further criminal prosecution for these offenses.

Finally, Respondent argues in the instant Motion that the alleged outrageous conduct by Government agents "is most certainly relevant to the sanction determination" by this Committee, and thus "[t]o deny Congressman Myers the right to have his conduct evaluated in that light is to deny him his constitutional rights merely because he is a congressman." Resp. Motion at 5-6. This argument appears to be based on a total misunderstanding of the Committee's Rules. The Committee has not limited in any way Congressman Myers' ability to introduce evidence at the sanctions hearing, so long as the Committee determines that such evidence is in fact relevant to the issue of sanctions. Whether evidence of entrapment, */ or similar governmental misconduct, would be relevant to the Committee's determination concerning sanctions will be for the Committee to decide. By its decision denying

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*/ It should be noted, however, that Respondent did not plead entrapment at his trial.

Respondent's motion to defer, the Committee simply has determined that its disciplinary proceedings need not await the courts' resolution of these questions.

For the foregoing reasons, Special Counsel respectfully urges the Committee to deny the Motion by Respondent Myers for Reconsideration of Motion to Defer Preliminary Inquiry, or, in the Alternative, to Defer Disciplinary Hearing, and urges the Committee to proceed on September 24, 1980, with its previously scheduled hearing in this matter.

Respectfully submitted,

E. Barrett Prettyman, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Special Counsel's Opposition to Motion by Respondent Myers for Reconsideration of Motion to Defer Preliminary Inquiry, or, in the Alternative, to Defer Disciplinary Hearing was delivered by hand this twenty-third day of September, 1980, to Plato Cacheris, Esquire, 1709 New York Avenue, N.W., Washington, D.C., counsel for Respondent.

E. Barrett Prettyman, Jr.